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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA FORBES, MAJORITY STAFF DIRECTOR
JAK BAIG, REPUBLICAN STAFF DIRECTOR

March 5, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Federal Building
1200 Pennsylvania Ave., NW
Washington, DC, 20460

Dear Administrator McCarthy:

On August 1, 2013, in response to a number of chemical facility accidents including the ammonium nitrate explosion in West Texas and a series of refinery explosions and fires, the President issued Executive Order 13650. The Executive Order establishes the Chemical Facility Safety and Security Working Group, co-chaired by you and the Secretaries of Homeland Security and Labor. Section 6 of the Executive Order requires the Working Group to identify and modernize agency policies, regulations, and standards to improve chemical facility safety.

The January 9, 2014, spill at the Freedom Industries chemical storage facility in Charleston, West Virginia, contaminated the drinking water supply to over 300,000 people. The Freedom Industries chemical storage facility was located about 1.5 miles upstream from the West Virginia American Water intake pipes on the Elk River. The facility was converted from a petroleum storage facility in 2001. Because the facility no longer stored petroleum, it was not required to have a spill prevention and control plan.

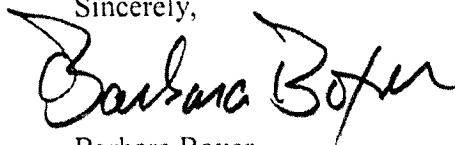
Although under existing law, Section 311(j)(1)(C) of the Clean Water Act contains legal authority to address spill prevention and control, this authority has primarily been used to address oil-related hazards from above-ground storage tanks. The spill prevention provisions for hazardous chemicals under the Clean Water Act have not been implemented, despite the fact that this authority was enacted decades ago.

I ask the President's Working Group to specifically look at existing authorities under the Clean Water Act to address spill prevention and control of hazardous chemicals from above-ground storage tanks. As part of this analysis, I also ask that the Working Group consider factors that can increase the risks and consequences of a spill, including the proximity to drinking water intakes.

It is clear that we cannot afford to leave important opportunities to prevent chemical disasters on the shelf. The time has come to update and modernize the laws that protect our drinking water.

Please let me know your plans for addressing this issue as part of the ongoing Working Group efforts.

Sincerely,

A handwritten signature in black ink, reading "Barbara Boxer". The signature is fluid and cursive, with the first name "Barbara" and last name "Boxer" clearly distinguishable.

Barbara Boxer
Chairman

United States Senate

HART SENATE OFFICE BUILDING
SUITE 112
WASHINGTON, DC 20510-0505
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<http://boxer.senate.gov>

February 27, 2014

The Honorable Gina McCarthy
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

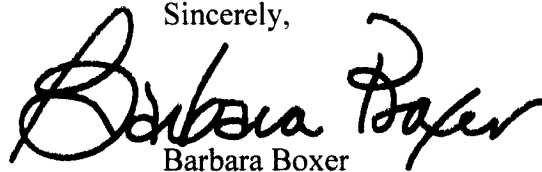
I am writing in support of the application submitted by the City of Vallejo to the Brownfields Assessment grant program.

The City of Vallejo is home to Mare Island Naval Shipyard, which was decommissioned in 1996. Since the base's closure, the City of Vallejo has been working to redevelop the property with public and private projects that include housing, businesses and recreational facilities.

If awarded, this grant funding in the amount of \$200,000 will allow the City of Vallejo to inventory brownfield sites and assess contamination so that the City can develop a plan to remediate the contamination on the city-owned section of Mare Island. Identifying and cleaning up contaminated sites will allow the City to safely continue to convert the former shipyard for civilian use.

I thank you in advance for your consideration of this application. Should your staff have questions, please contact my Field Representative, Brandon Ida, at (916) 448-2787.

Sincerely,



Barbara Boxer
United States Senator

BB:bi

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U.S. Environmental Protection Agency
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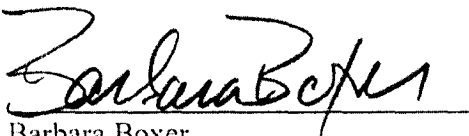
Dear Administrator McCarthy:

Thank you for appearing before the Committee on Environment and Public Works on January 16, 2014, at the hearing entitled, "Review of the President's Climate Action Plan." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

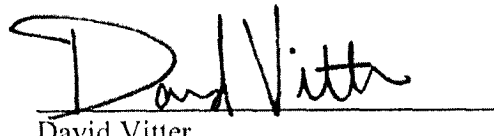
Enclosed are questions for you that have been submitted by Senators Boxer, Carper, Vitter, Inhofe, Barrasso, Sessions, Crapo, and Fischer for the hearing record. Please submit your answers to these questions by COB March 19, 2014, to the attention of Mara Stark-Alcalá, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to Mara_Stark-Alcala@epw.senate.gov. To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Joe Mendelson of the Majority Staff at (202) 224-8832, or Margaret Caravelli of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,



Barbara Boxer
Chairman



David Vitter
Ranking Member

Environment and Public Works Committee Hearing
January 16, 2014
Follow-Up Questions for Written Submission

Questions for McCarthy

Questions from:

Senator Barbara Boxer

1. On December 7, 2009, the EPA made the finding (Endangerment Finding) that current and projected levels of greenhouse gases including, carbon dioxide (CO₂) and methane threaten the public health and welfare of the nation's current and future generations. Could you please summarize the findings as it relates to the extreme weather, floods, drought and wildfires?
2. Could you please summarize the peer-reviewed science that served as the basis for the Endangerment Finding?
3. Was the EPA use of peer-reviewed climate change science in the Endangerment Finding upheld by the U.S. Court of Appeals for the District of Columbia in the case *Coalition for Responsible Regulation v. EPA* (June 26, 2012)?
4. EPA has sought public comments on its proposed rules for new power plants. Is it correct that the agency received over 2.5 million public comments on the proposal?
5. Is it correct that the vast majority of these comments supported EPA action to limit carbon pollution from power plants?
6. The Climate Action Plan calls for using the Clean Air Act to set limits on carbon pollution from cars, trucks, and power plants. Are these actions supported by the Supreme Court decisions in *Massachusetts v. EPA* (2007) and *American Electric Power v. Connecticut* (2011), as well as more recent decisions from the U.S. Court of Appeals for the D.C. Circuit?
7. The Climate Action Plan calls for using the Clean Air Act to set limits on carbon pollution from cars, trucks, and power plants. Over the Clean Air Act's forty-plus year history what benefits has it provided to the nation's health and economy?
8. The Administration has already taken several steps to reduce carbon pollution. One of the biggest steps has been new fuel economy standards for cars and trucks. Could you please describe the consumer and climate change benefits of those rules?
9. Do other countries have standards requiring that new coal-fired power plants to capture carbon dioxide?
10. If so, do any of these standards require greater capture of carbon dioxide than the levels proposed by the EPA in its "Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units," 79 Fed. Reg. 1430 (Jan. 8, 2014)?
11. In October 2013, the Global CCS Institute, whose membership includes American Electric Power, Arch Coal and Duke Energy, stated that "CCS technology is well understood and a reality." It also identified, as of September 2012, 75 large-scale integrated CCS projects with 16

of these projects currently operating or in construction and 59 in planning stages of development. Do these findings support a determination that that carbon capture and sequestration technology is a best system of emission reduction that has been adequately demonstrated?

Senator Thomas R. Carper

1. Administrator McCarthy, I was quite happy with what was in the President's Climate Action Plan. However, I was surprised to see what was not included – support for domestic efforts to reduce black carbon. Recent studies have shown black carbon to be the second most damaging greenhouse agent behind carbon dioxide. These same studies have shown the most effective way to reduce black carbon is by cleaning up diesel emissions. Do you believe DERA and domestic clean diesel programs like Clean Construction should be part of our strategy to address climate here at home? If so, do you think we can expect more support from the Administration in future budgets?
2. The EPA is scheduled to finalize standards for cooling water intake structures under section 316(b) of the Clean Water Act by January 28, 2014. What steps have been taken to ensure the best science available has been used to determine both the costs and benefits to justify the new standards?
3. In 2013, 4 of our nation's 104 nuclear power reactors permanently shutdown and one more is scheduled to retire by the end of 2014. We may see more closures this year. What are the assumptions in the President's Climate Action Plan about the base load generation of electricity through nuclear power in order to meet climate and carbon emission goals? What will the impact of these 5 plant closures be on the President's climate and carbon emission goals? What will the impact of more nuclear power reactor closures, if any, be on those goals?

Senator David Vitter

1. How much has your agency spent on climate change-related activities, including those in furtherance of the Climate Action Plan, since 2008?
2. According to EPA, an apparent benefit of the proposed rule is that the new source rule will serve as a “necessary predicate” for a power plant existing source rule under section 111(d). As EPA notes, under section 111, Congress prohibited EPA from issuing an existing source rule for a pollutant under section 111(d) unless it had first issued a new source rule under section 111(b) for that pollutant. Do you think issuing a “pro forma” new source rule that does nothing except pave the way for an existing source rule circumvents Congressional intent, and renders the new source rule predicate added to the statute meaningless?
3. The Office of Management and Budget, during its review of EPA’s re-proposed New Source Performance Standards for Power Plants, questioned EPA’s assertion of the technical feasibility of carbon capture because EPA’s determination that carbon capture and storage is adequately demonstrated as the best system of emissions reduction “relies heavily on literature reviews, pilot projects, and commercial facilities yet to operate.” OMB also asserted that they believed “this cannot form the basis of a finding that CCS on commercial-scale power plants is ‘adequately demonstrated.’” OMB also requested details of the specific CCS operations already in service that process the rate of CO₂ necessary for a typical IGCC power plant to be in compliance.
 - a. What examples did EPA explicitly provide?
4. You’ve said that hydraulic fracturing can be done safely and have agreed with former EPA Administrator Lisa Jackson that there have been no confirmed cases of hydraulic fracturing impacting drinking water. Given that the President’s Climate Action Plan relies heavily on the use of natural gas, what is your vision for getting the American public to understand that hydraulic fracturing is safe and that fracking has unlocked an American energy revolution that is lowering all Americans’ energy prices, creating jobs, helping to lower GHG emissions, and revitalizing such industries as the manufacturing, steel, and chemical sectors?
5. EPA has addressed GHG emissions from the refining industry through fuel economy standards and through the GHG Tailoring Rule for larger projects. The refining industry accounts for only 3% to 6% of the total U.S. GHG emissions from industry. The refining industry already has the incentive to control energy: energy accounts for up to 50% of a refinery’s controllable costs. Because the refining industry is already highly efficient, EPA analysis indicates that there is no opportunity for any significant reductions in this sector. Why is EPA putting efforts into regulating already highly efficient industries?
6. What is the status of EPA’s response to Industry’s Freedom of Information request filed on August 20, 2013, with respect to the Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866?
7. The second proposal of the GHG NSPS for new power plants does not address the Energy Policy Act of 2005 (EPAAct) or the potential limitations it imposes on EPA’s “Best System of Emission Reduction” analysis. What is EPA’s position on the fact that EPAAct prohibits EPA from considering technology used at a facility receiving assistance under the Department of Energy’s Clean Coal Power Initiative, or at a facility that is receiving an advanced coal project tax credit, as being “adequately demonstrated” for purposes of Section 111 of the Clean Air Act?

8. Under the language of Section 111(d) of the Clean Air Act, EPA establishes a procedure under which states submit to the EPA a plan that contains standards of performance for existing stationary sources.
 - a. Does EPA agree that the states, not EPA, have the authority to establish "standards of performance" for existing stationary sources?
 - b. Does EPA agree that any carbon dioxide emissions standards for existing power plants should be achievable at existing power plants?
9. In a document entitled "Questions for State Partners" issued by EPA in September 2013, EPA surveyed States about their experiences with "...emissions budget trading programs, resource planning requirements, end-use energy, efficiency resource standards, renewable energy portfolio standards, and appliance and building code energy standards..." This document suggests that EPA plans to decide what is achievable at existing electricity generating units by looking "outside the fence" to these types of activities. Can you confirm that EPA will not go "outside the fence" when deciding what is "achievable" by existing power plants? Yes or no?
10. Last fall, 17 State Attorneys General and one Senior Environmental Regulator sent you a white paper. The AGs raised concerns that EPA will not properly defer to States in establishing and implementing standards for existing power plants, and that under the guise of "flexibility," EPA will require existing power plants to operate less or shut down. Can you provide any assurances that, in its GHG regulation of existing plants, EPA will not force the retirement or reduced operation of still-viable coal-fired power plants?
11. EPA is running point on the 316(b) proposal. This rule, as it was proposed, would affect a staggering 600 facilities across the country. I'm concerned about the cross-agency coordination, considering all of the agencies that are now involved. Are you concerned at all that these ESA negotiations could actually result in a de facto mandate to install cooling towers on power plants and manufacturers who use waters to cool their facilities?
12. Several provisions in EPA's proposed 316(b) cooling water intake rule could lead to a requirement to install cooling towers. These include (1) a requirement for modified units, including nuclear uprates or replacements of turbines and condensers, to install cooling towers similar to EPA's New Source Review program under the Clean Air Act, (2) a requirement to use "willingness-to-pay" surveys to measure benefits that would significantly overstate benefits and possibly justify a decision to install towers; (3) a change in the status of cooling ponds and impoundments long considered to be closed-cycle cooling; and (4) overly broad Endangered Species Act provisions that could require facilities to cease operation or install cooling towers if a threatened or endangered species is located in a water body from which a facility draws water even without evidence of impact to that species. Facilities faced with a requirement to install cooling towers would likely retire rather than retrofit. This is especially true for nuclear units, many of which are unprofitable today as a result of low demand, low natural gas prices and subsidized renewable generation. Have you considered the effect of retirements of nuclear units on grid reliability and climate change goals as a result of the 316(b) rulemaking?
13. We believe the Services should conclude the rule is "not likely to adversely affect" T&E species. We agree with EPA's original finding that the rule does not authorize any actions that could potentially harm T&E species because the rule provides additional protections for species from impingement and entrainment at cooling water intake structures. What steps are EPA taking to

ensure that its original finding will prevail in the final rule? What organizations within the Administration are contesting that finding and on what basis?

14. Any ESA monitoring and study requirements must be focused on T&E species directly affected by the intake through entrainment or impingement. We understand that the proposed ESA provisions in 316(b) will require permittees to identify listed species that *may* be in the waterbodies from which a facility draws water and *might be* indirectly affected by intake structures. How does such an approach comport with the Endangered Species Act or the Clean Water or 40 years of precedent?
15. The approach proposed to be used to incorporate proposed ESA provisions into the state 316(b) permitting process represents a dramatic departure from the current NRC-initiated Section 7 consultations procedure used for nuclear facilities that involves multiple federal agencies. Having the ESA consultation take place prior to submittal of a state permit application would shift the decision-making to a single federal agency. Rather, any ESA study or consultation should occur as an integral part of the current permitting process and not separately. What are your thoughts on this?
16. On June 25, 2012, the San Miguel Electric Cooperative submitted comments on the original proposed Greenhouse Gas New Source Performance Standards.¹ Those comments explicitly warned that the Energy Policy Act of 2005 ("EPAAct") prohibits EPA from considering technology funded by the Clean Coal Power Initiative in analysis under § 111 of the Clean Air Act. Three months later, when introducing Re-proposed GHG NSPS on September 20, 2012, you referred to comments submitted to the original proposal saying, "We did what democracy demands. We paid attention. We read those comments. We thought about them. And we decided that we needed to update the proposal." However, you recently testified to the Committee that you were unaware of the EPAAct prohibitions noted in the San Miguel comments at the time you made that statement.
 - a. Were any Agency employees involved in drafting the Re-Proposed GHG NSPS aware of the EPAAct prohibitions when the rule was issued on September 20, 2012?
 - b. When was the first time Agency employees involved in drafting the Re-Proposed GHG NSPS discussed the EPAAct prohibitions?
17. According to the Re-proposed GHG NSPS, "DOE/NETL has prepared other reports—in particular their 'Cost and Performance Baseline' reports, including one on partial capture — that further support our proposed determination of the technical feasibility of partial capture." However, the DOE/NETL cost and performance baseline for partial capture includes a 20% "process contingency" to account for the fact that pre-combustion and post-combustion carbon capture is "unproven technology at commercial scale" for power plant applications. Please explain how modeling that assumes that CCS is unproven technology for commercial-scale power plants supports finding CCS to be proven technology for commercial-scale power plants.

¹ Euitizi, Joseph, *Comments on the Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, Proposed Rule*, 77 Fed. Reg. 22392, SAN MIGUEL ELEC. COOP., Docket No. EPA-HQ-OAR-2011-0660-9964, Jun. 25, 2012 (citing EPAAct §402(i) and saying "The Clean Coal Power Initiative . . . was created by the Energy Policy Act of 2005 . . . to provide hundreds of millions of dollars of federal funding to clean coal projects. However, understanding that technologies developed under this act would not be commercially available. Congress included limitations on using these technologies as part of NSPS or other CAA reviews . . .") (emphasis in original)).

18. On December 19, EPA issued a draft guidance on EOR operations, "Draft Underground Injection Control Program Guidance on Transitioning Class II Wells to Class VI Wells," that suggests if the business model for a well or group of wells changes from enhanced recovery to permanent carbon storage, the wells may need to be re-permitted as Class VI wells.
 - a. Did EPA consider the cost of re-permitting and converting these wells in the proposed GHG rule?
 - b. Isn't it true the CO2 injection in EOR applications is the only possible scenario that is at all economical?
19. Stringent regulations in the U.S. will also increase the likelihood that energy intensive industries will build in other countries with fewer environmental controls. How are you addressing the problem of carbon leakage to make sure these regulations do not in fact increase global GHG emissions?
20. I, along with others, sent three letters to EPA regarding the Agency's involvement in the development of the SCC estimates, including the Agency's participation in the Interagency Working Group. Your Director Atmospheric Programs testified that staff from that office participated in the IWG, assisting particularly in respect to the technical work and the modeling.
 - a. Did you participate in any meetings of the IWG?
 - b. Did any of your direct reports participate in or attend any of the meetings?
 - c. Did you sign off on or approve any materials, technical analysis, or assistance that was provided by the Agency to the IWG?
 - d. Are the models relied upon in developing the Social Cost of Carbon estimates published and available on EPA's website?
 - e. Is the technical work and modeling conducted by EPA's Office of Atmospheric Programs for the IWG in the development of the SCC estimates publicly available including on EPA's website?
 - f. Which of your Agency's offices participated, including the number of staff, hours, and other resources dedicated to such work, as well as any outside experts or consultants that provided input or comments?
21. The interagency working group decided to focus on the *global* social cost of carbon even though OMB Circular A-4 requires the regulatory impact analyses to include an analysis of *domestic* costs and benefits, leaving international analysis optional.
 - a. What is the difference between the global and U.S.-only [domestic] social cost of carbon?
 - b. How will you balance domestic versus global estimates of the social cost of carbon in making decisions?
 - c. Why doesn't the SCC only address the domestic cost as required by OMB?

Senator James Inhofe

1. Ms. McCarthy, during your tenure at the EPA, has the Agency ever produced an estimate of the job losses that would be sustained across the entire economy as a result of a new regulation?
2. With respect to the EPA's New Source Performance Standards for electric generation units, did OMB, the Department of Energy, or any other agency in the federal government raise any concern or question that the rule's requirement to use Carbon Capture Sequestration technology may not yet be commercially demonstrated?

Senator John Barrasso

1. A Bloomberg News story ran entitled "EPA Assertions on Carbon Capture Viability Sparked Concerns by White House Officials." The article, which ran on January 10, 2014, quotes from interagency comments prepared by the White House Office of Management and Budget. The article quotes the White House OMB as saying about your new rule that—

"EPA's assertion of the technical feasibility of carbon capture relies heavily on literature reviews, pilot projects, and commercial facilities yet to operate. We believe this cannot form the basis of a finding that CCS on commercial-scale power plants is 'adequately demonstrated.'"

As stated before, the law requires that emission control performance standards must be "adequately demonstrated." The White House is clearly saying that CCS is not adequately demonstrated.

What does the White House know that you haven't acknowledged and is the agency going to speak more definitively on this topic? If so, when?

Senator Jeff Sessions

1. I have received many letters from constituents who are deeply troubled by the unwarranted, burdensome aspects of the President's climate agenda. A few examples are provided below, along with questions for you to answer specifically.

- a. **Jerry in Birmingham, Alabama** wrote: "I would like to know how [President] Obama and the EPA can pass laws that are closing the coal industry. There is no consideration about the impact on the middle class and our energy program. I thought Congress passed laws because each person in Congress represents the people in his district/state. We can't have one person setting regulations ..."

Please explain how, in your view, Congress has expressly authorized the Environmental Protection Agency to regulate carbon dioxide released from the combustion of coal and natural gas in electric generating units.

- b. **Leslie in Gardendale, Alabama** wrote: "The President is talking about helping the middle class yet his policies and laws are hurting the middle class by destroying middle class jobs related to the coal industry... The company I work for had 50 employees when the President took office and today we have 28." Similarly, **Steve in Winfield, Alabama** wrote: "If we really want to grow the economy and create good paying jobs, then why would we do anything to make coal more costly to mine and use? The main areas where coal mines are operating are areas that would be economically devastated if coal mining were non-existent. These areas have a blue collar work force ..."

Please explain your best estimate of the number of coal sector jobs that would be impacted by the portions of the President's climate plan that EPA intends to implement.

- c. **Keith in Fayette, Alabama** wrote: "With the Obama Administration's all-out war on coal, he is killing hundreds of thousands of jobs both directly and indirectly nationwide... This is a rare issue that touches every single person living in our state."

Please list every regulation proposed and/or finalized by EPA since January 21, 2009 that is likely to have an adverse impact on coal sector jobs in the United States.

2. Has EPA fully analyzed the economic impact of the President's Climate Action Plan, taking into account the "whole economy"? If so, can you give me a copy of that report? Has EPA fully analyzed the specific impact of the President's plan on blue collar, middle class jobs?
3. I am informed that, according to a recent study, Alabama families spend an estimated average of 13% of their after-tax incomes on energy, and that of the 489,000 Alabama families with annual incomes of \$10,000 to \$30,000, one quarter of the state's population, spend an estimated average of 25% of their after-tax family budgets on energy. In light of these facts, can you assure me that the President's Climate Action Plan will not increase energy costs for low- and fixed income families in my state? Can you assure any other Senators that the Plan will NOT increase energy costs for low- and fixed-income families in their states?
4. Can you assure me that the President's Climate Action Plan will NOT increase energy costs for Alabama manufacturers?

5. Even the mere threat of expensive new regulations can hinder job creation and economic growth. President Obama conceded this fact when, in 2011, he directed EPA to not move forward with reconsideration of the ozone standard “particularly as our economy continues to recover” (Pres. Obama, 9/2/2011). At the time, EPA’s reconsideration of the ozone standard was considered to be one of the most expensive rules ever proposed by EPA, and it threatened thousands of jobs. It is also true that the ozone reconsideration imposed a tremendous burden on state and local governments, and cost taxpayers millions of dollars. On December 17th, I wrote you a letter, joined by all Republicans on this Committee, outlining these concerns and renewing a longstanding, unanswered request for an accounting by EPA of the costs it incurred as part of the ozone reconsideration process. EPA has had more than 2 years to answer our request, and during your confirmation process, you committed that you would answer. One day before our hearing, on January 15, 2014, EPA responded with a brief letter to my attention, declining to provide the requested information. Troublingly, EPA conceded that “...it is difficult for us to estimate, with any meaningful precision, the expenses and full-time equivalent employees used for the reconsideration of the 2008 standard specifically.” This sounds like an admission by EPA that it can’t provide Congress with an explanation about how much taxpayer funds were used in the ozone reconsideration process. Why can’t an agency with thousands of employees produce a simple accounting of dollars and time spent on a major rulemaking effort? Would EPA be able to provide an accounting of all taxpayer funds expended as part of EPA’s implementation of the President’s climate action plan?
6. We have received official satellite temperature data for 2013, and those measurements show that global temperatures did not increase last year—continuing a trend going back to 1998. Do you dispute this fact—that global atmospheric temperatures, as measured in the lower troposphere, have not increased in over 15 years?
7. Your testimony seems to acknowledge that U.S. actions, alone, will not result in meaningful changes in global temperatures. Your written testimony provides: “The President’s Plan recognizes that the United States must couple action at home with leadership abroad.” Is it correct that, even if the President’s entire climate agenda is implemented and his emissions reductions goals are achieved in full, there would be no significant difference in global temperatures 20, 50, or even 100 years from now (relative to current projections), unless China, India, and other large nations take similar steps to reduce their emissions by comparable amounts? While U.S. and European CO₂ emissions have declined or remained fairly stable since 2000, CO₂ emissions from China have increased by almost 170% since 2000. India is also increasing emissions dramatically. What firm commitments has the Administration obtained from China or India to reduce CO₂ emissions?
8. According to the IEA, there are over 2,300 coal-fired power plants worldwide. In its proposed CO₂ standard for new power plants, EPA proposed that U.S. coal-fired power plants be required to install carbon capture and storage (CCS) systems. Of the 2,300 coal-fired power plants in the world today, how many full scale CCS projects are operating presently?
9. In a letter to me dated December 24, 2013, the State Department acknowledged a “recent slowdown in atmospheric warming,” but the President seems to deny that there is a slowdown in warming. Do you agree that we have currently experienced a period of at least 15 years without significant increases in global temperatures as measured in the lower troposphere? Have you discussed these facts concerning global temperatures with the President? Will you do so in the future to ensure his comments on the status of climate, as the nation’s Chief Executive, are accurate?

Senator Mike Crapo

1. In your testimony, you mentioned “the President asked the EPA to work with states, utilities and other key stakeholders to develop plans to reduce carbon pollution from future and existing power plants.” Additionally, you mentioned the eleven public listening sessions your agency held around the country as proposed regulations were developed. However, these listening sessions avoided many of the areas where the President’s Climate Action plan will likely have the most severe negative economic consequences.
 - a. Does the EPA not view our country’s top coal producing and utilizing states as “key stakeholders” in this policy debate?
2. You mentioned a threat to national security as a potential consequence of not vigorously implementing policies to combat climate change. A greater concern to me in the arena of national security, which history has shown, is the reliance on foreign energy resources from volatile regions of the world.
 - a. With the abundant energy resources in the U.S., including natural gas, coal and petroleum, and the subsequent threat posed by the President’s Climate Action Plan in utilizing these resources, how do you propose to promote our national security while undermining our energy security?
 - b. Nuclear, a zero emissions energy resource, was not mentioned in your opening testimony, however, it is mentioned in the President’s Climate Action Plan.
 - c. As Administrator of the EPA, what is your personal assessment of the role nuclear energy can play in accomplishing the Administration’s climate objectives?
 - d. What assumptions does the Administration’s climate action plan make regarding new nuclear plants?
 - e. What assumptions does the Administration’s climate action plan make regarding existing nuclear plants?
 - f. The President’s Climate Action Plan discusses supporting new nuclear plants (primarily in the context of international activities). What activities does the Administration envision undertaking to ensure the continued operation of existing nuclear plants?
 - g. Have you looked at the effect that closing nuclear power plants would have on the President’s climate goals?
3. Dr. Judith Curry, PhD, Professor and Chair, School of Earth and Atmospheric Sciences, Georgia Institute of Technology, mentioned in her testimony that reducing carbon emissions is not simply a “control knob” in reducing the threat of global climate change, as evidenced by the inconsistency between emissions and temperature forecasts over the past approximately fifteen years. Reducing carbon emissions is a central pillar of the President’s Climate Action Plan.
 - a. If fully implemented, what would you anticipate the measurable gain, if any, the Administration’s proposal would be on the issue of climate change?

Senator Deb Fischer

1. Administrator McCarthy, last September, seventeen state attorneys general and one state environmental commissioner wrote to you to express their concerns regarding what they called "a serious, ongoing problem in environmental regulation: the tendency of EPA to seek to expand the scope of its jurisdiction at the cost of relegating the role of the States to merely implementing whatever Washington prescribes, regardless of its wisdom, cost, or efficiency in light of local circumstances." Specifically the states highlight the limits of EPA's authority under the Clean Air Act for regulating existing sources.
 - a. Do you agree with these state officials that under the law, EPA's authority is limited to establishing a procedure by which the states submit plans for regulating existing sources?
 - b. Do you agree that while EPA is authorized to require states to submit plans containing performance standards, EPA may not dictate what those performance standards shall be, nor may EPA require states to adopt greenhouse gas performance standards that are not based on adequately demonstrated technology?
2. Charles McConnell, former Assistant Secretary for Fossil Energy at the Department of Energy, recently stated before Congress and to the press that carbon capture and storage technologies are not adequately demonstrated and commercially available and viable. His message is clear, that that carbon capture is not ready for a mandate, as has been done in EPA's NSPS proposal. Multiple Administration officials have refused to address Mr. McConnell's comments. What is your response to his claims? Is he right or wrong?
3. Media reports recently revealed that EPA's Science Advisory Board (SAB) raised multiple concerns with EPA about how it went about formulating its New Source Performance Standards. The reports say that the SAB wanted to undertake a formal review of how EPA went about the process, but EPA staff pressured the SAB not to do so. What is the purpose of having an SAB if EPA does not want it to do its job?
4. A new study by Life Cycle Associates (a firm that has done work under contract for EPA) found that average corn ethanol was reducing GHG emissions by 21% in 2005; yet, EPA's analysis suggests this level won't be achieved until 2022. The final rule for the RFS2 clearly indicated that EPA would update its GHG analysis as new information became available. A number of recent papers by academia, government, and industry show that corn ethanol's GHG performance is significantly better than assumed by EPA. But the Agency has not made a single change to its original GHG analysis to reflect advanced in the science. Why?

BARBARA BOXER, CALIFORNIA, CHAIRMAN

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DEB FISCHER, NEBRASKA

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

June 27, 2014

Mr. Barry N. Breen
Principle Deputy Assistant Administrator
Office of Solid Waste and Emergency Response
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

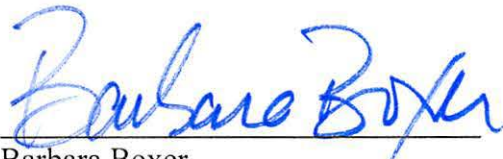
Dear Mr. Breen:

Thank you for appearing before the Committee on Environment and Public Works on June 10, 2014, at the hearing entitled, "Protecting Taxpayers and Ensuring Accountability: Faster Superfund Cleanups for Healthier Communities" We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

Enclosed are questions for you that have been submitted by Senators Booker and Vitter for the hearing record. Please submit your answers to these questions by COB July 11, 2014, to the attention of Colin MacCarthy, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to Colin_MacCarthy@epw.senate.gov. To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Kim Smaczniak of the Majority Staff at (202) 224-8832, or Dimitri Karakitsos of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,



Barbara Boxer
Chairman



David Vitter
Ranking Member

Environment and Public Works Committee Hearing
June 10, 2014
Follow-Up Questions for Written Submission

Questions for Breen

Questions from:

Senator Cory A. Booker

1. Mr. Breen as you know, climate change is upon us. It is not some problem of the distant future, but is a crisis in the here and now. What this means in New Jersey, unfortunately, is that we know we have to expect more flooding – and in some places, a lot more flooding. Some Superfund sites that were previously not in flood zones now are, or soon will be. What is the EPA doing to address the threat of flooding to superfund sites, where at some sites there will now be an even greater danger of contamination from one property spreading to others, and increased risk of groundwater contamination?
2. In May of 2014, EPA announced a remediation plan for the lower Passaic River. Can you describe the consultation with industry, stakeholders and communities along the lower Passaic that took place in advance of this plan being selected? How many years did the EPA study of this issue take?
3. How is this plan the best option, in EPA's analysis, to protect public health and the environment?
4. Did EPA fully consider alternative remediation plans before making its decision?

Environment and Public Works Committee Hearing
June 10, 2014
Follow-Up Questions for Written Submission

Questions for Breen

Questions from:

Senator David Vitter

1. In addition to the Corps' current authority to remove contaminated sediments outside of federal navigation channels, the Water Resources Reform and Development Act authorized the use of the Harbor Maintenance Trust Fund to pay for dredging and disposal of legacy-contaminated sediments in and adjacent to certain eligible federal navigation channels. Is EPA aware of this new provision? It has come to my attention that EPA seems to be applying a different construct on who is responsible for paying for the dredging and disposal of contaminated sediments in and adjacent to federal navigational channels.
2. I am concerned that EPA may be blurring the lines between its regulation of Superfund clean-up responsibilities and the Corps of Engineers' navigational dredging responsibilities. There are many sites across the country where the Agency is requiring some amount of dredging to clean up past contamination of river sediments - usually to remove toxic hotspots. However, the EPA has not required responsible parties as part of a Superfund cleanup to pay for both the dredging costs required for removal and treatment or containment of contaminated sediments and the dredging costs required for navigation maintenance until recently at the Lower Passaic site in New Jersey. I'm concerned that EPA is proposing that the responsible parties also pay for all the costs of dredging the Lower Passaic River federal navigation channel to up to 30-feet to accommodate anticipated future commercial vessel traffic. I understand that responsible parties are responsible for the added costs of removing, treating, and containing contaminated sediments above the standard federal costs of maintaining commercial navigation channels, but requiring responsible parties to also pay for the standard navigation dredging costs goes beyond Superfund and is a responsibility of the Corps of Engineers. Additionally, I understand that the EPA proposes that the responsible parties pay for dredging a portion of the channel that will be maintained only for recreational vessel use, not for commercial vessel use. Under the Corps of Engineers' authorities, navigation channels for only recreational use would usually be maintained by the non-federal government sponsor, such as a State, county, or city.
 - a. By proposing this remedy are you telling me that all of the proposed dredging of the Lower Passaic River is necessary to protect public health and the environment and none of it is required for commercial and recreational vessel navigation purposes?

3. It has come to my attention that EPA is not applying its own sediment guidance in selecting remedies consistently across the nation. For example, at the Lower Duwamish site in Washington, the EPA selected a remedy that uses adaptive management and targets hot spot removals along the river rather than dredging the entire river. Similarly, the Fox River in Wisconsin is using adaptive management as are many other sites. The outlier seems to be the Lower Passaic River which would dredge over 4.3 million cubic yards of material and cap the river rather than target hot spots. What is the purpose of the sediment guidance if EPA is not applying it consistently? When will EPA begin applying the guidance consistently?
4. What are the most important factors in selecting a remedy? For example, if two remedies are equally protective, will EPA select the lower cost remedy?
5. What role does timing of a cleanup play? For example, if a site can be cleaned up faster, is that preferred over a remedy that will take more time?
6. How does EPA estimate the timing of a cleanup? For example, at one site EPA estimated that it will take five years to dredge 4.2 million cubic yards, but at another site EPA estimated that dredging 3.9 million cubic yards will take 42 years. How is it possible to have two estimates so far apart?
7. When EPA is formulating the costs of its remedies, does it factor in the costs and inconvenience associated with its preferred remedies? For instance, in the case of the Lower Passaic River, it's my understanding there is a large amount of commerce and traffic as well as the 16 bridges that cross the river. What is the cost of inconvenience and traffic when those bridges are raised to allow for your tall dredging boats? Has that been factored in and are the communities aware of what awaits them?
8. It has come to my attention that buried in Appendix G of EPA's Lower Passaic cleanup plan is a list of possible hazardous waste sites that the dredged material – 4.3 million cubic yards – may be disposed. I was surprised to learn that one of the sites listed to receive this toxic material is in Louisiana. Why did the EPA decide to ship this toxic dredged material out of state rather than manage it in state or in a CAD as they do at many other dredging operations?
9. What role does EPA headquarters play in selecting a remedy – particularly at complicated sites with large cleanup costs? Does headquarters or the region select the remedy? Does headquarters have a veto over a regional decision and if so has it ever exercised this role. Does headquarters worry about consistency across the nation? If so, how do you ensure consistency?
10. There are lots of instances where major parties at Superfund sites are not at the table. EPA typically focuses on cooperating parties but doesn't often bring other parties to the table. What is EPA's plan to bring all major parties to the table?

11. The EPA seems to pick and choose who it goes after to seek the financial costs for a clean-up. As you look at your proposed \$1.7 billion clean-up of the Lower Passaic River, can you assure this Committee that all parties who have any role in polluting the River – including local municipalities – have been included in your responsibility?
12. How much of your appropriated funds are not used for core cleanup projects?
13. During the hearing, both you and the Chairman said you are committed to expeditious clean-up of Superfund sites to improve the health and welfare of constituents living along the impact areas. We all share that goal. But we know throughout the history of Superfund that it is litigation prone with cooperating parties seeking financial support from other responsible parties – all of which prolongs the ultimate remedy and actual clean-up. Even in the Chairman's home State of New Jersey, the EPA Proposal for the clean-up of the Lower Passaic River is not likely to see real clean-up activity for years. Please share with this Committee how you evaluate alternative clean-up proposals that can be equally protective of the environment, may cost less to implement, and which may result in a consensus approach by the responsible parties negating any litigation delay.
14. If there is a shortage of money for the Superfund program, why does the EPA redirect major parts of its Superfund program appropriation to activities not immediately concerned with the clean-up of Superfund sites? What administrative costs can EPA cut back on or outright reduce?
15. If the Superfund tax were re-imposed on U.S. manufacturers and businesses then the burden would fall upon goods, made from certain chemicals that are produced in the U.S. So imported finished products would not bear the tax because the taxable products are already incorporated into the finished products. So finished products imported into the U.S. would be less expensive to produce and would have a clear market advantage. What effect would this have on U.S. jobs?
16. What are EPA's estimated construction completions for 2015, 2016, 2017, and 2018? What are EPA's estimated administrative costs for those respective years as well?
17. In addition to the Corps' current authority to remove contaminated sediments outside of federal navigation channels, the Water Resources Reform and Development Act authorized the use of the Harbor Maintenance Trust Fund to pay for dredging and disposal of legacy-contaminated sediments in and adjacent to certain eligible federal navigation channels. Is EPA aware of this new provision? It has come to my attention that EPA seems to be applying a different construct on who is responsible for paying for the dredging and disposal of contaminated sediments in and adjacent to federal navigational channels.
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23. When EPA is formulating the costs of its remedies, does it factor in the costs and inconvenience associated with its preferred remedies? For instance, in the case of the Lower Passaic River, it's my understanding there is a large amount of commerce and traffic as well as the 16 bridges that cross the river. What is the cost of inconvenience and traffic when those bridges are raised to allow for your tall dredging boats? Has that been factored in and are the communities aware of what awaits them?
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concerned with the clean-up of Superfund sites? What administrative costs can EPA cut back on or outright reduce?

31. If the Superfund tax were re-imposed on U.S. manufacturers and businesses then the burden would fall upon goods, made from certain chemicals that are produced in the U.S. So imported finished products would not bear the tax because the taxable products are already incorporated into the finished products. So finished products imported into the U.S. would be less expensive to produce and would have a clear market advantage. What effect would this have on U.S. jobs?
32. What are EPA's estimated construction completions for 2015, 2016, 2017, and 2018? What are EPA's estimated administrative costs for those respective years as well?

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

DELINA FOMBER, MAJORITY STAFF DIRECTOR
TAYLOR BAIG, REPUBLICAN STAFF DIRECTOR

April 1, 2014

Janet McCabe
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Dear Ms. McCabe:

On behalf of the Senate Committee on Environment and Public Works, we invite you to testify before the Committee at a hearing entitled, "Hearing on the Nominations of Janet G. McCabe to be the Assistant Administrator for Air and Radiation of the U.S. Environmental Protection Agency (EPA), Ann E. Dunkin to be the Assistant Administrator for Environmental Information of the EPA, and Manuel H. Ehrlich, Jr., to be a Member of the Chemical Safety and Hazard Investigation Board." The hearing will be held on Tuesday, April 8, 2014, beginning at 10:00 AM in Room 406 of the Dirksen Senate Office Building. The purpose of this hearing is to examine the nomination of Janet G. McCabe to be the Assistant Administrator for Air and Radiation of the Environmental Protection Agency, Ann E. Dunkin to be the Assistant Administrator for Environmental Information of the Environmental Protection Agency, and Manuel H. Ehrlich, Jr., to be a Member of the Chemical Safety and Hazard Investigation Board.

In order to maximize the opportunity to discuss this matter with you and the other witnesses, we ask that your oral testimony be limited to five minutes. Your written testimony can be comprehensive and will be included in the printed record of the hearing in its entirety, together with any other materials you would like to submit.

To comply with Committee rules, please provide 100 double-sided copies of your testimony at least 48 hours in advance of the hearing to the Committee at the following address: 410 Dirksen Senate Office Building, Washington, DC 20510-6175. To ensure timely delivery, the copies of testimony must be hand delivered to 410 Dirksen. Please do not send packages through FedEx, U.S. Mail, or overnight delivery services, because they will be subject to offsite security measures which will delay delivery. Please also email a copy of your testimony (in both MS Word and as a PDF file) to the attention of Mara Stark-Alcalá, Mara_Stark-Alcala@epw.senate.gov, at least 48 hours in advance.

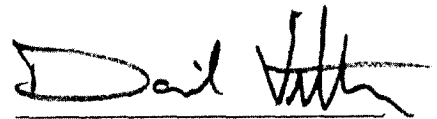
If you plan to use or refer to any charts, graphs, diagrams, photos, maps, or other exhibits in your testimony, please deliver or send one identical copy of such material(s), as well as 100 reduced (8.5" x 11") copies to the Committee, to the attention of Mara Stark-Alcalá, Mara_Stark-Alcala@epw.senate.gov, to the above address at least 48 hours in advance of the hearing. Exhibits or other materials that are not provided to the Committee by this time cannot be used for the purpose of presenting testimony.

If you have any questions or comments, please feel free to contact David Napoliello of the Committee's Majority staff at 202-224-8832 or Bryan Zumwalt of the Committee's Minority staff at 202-224-6176.

Sincerely,



Barbara Boxer
Chairman



David Vitter
Ranking Member

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POBIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

April 3, 2014

The Honorable Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

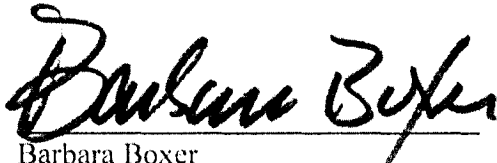
Dear Assistant Administrator Stanislaus:

Thank you for appearing before the Committee on Environment and Public Works on March 6, 2014, at the hearing entitled, "Preventing Potential Chemical Threats and Improving Safety: Oversight of the President's Executive Order on Improving Chemical Facility Safety and Security." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

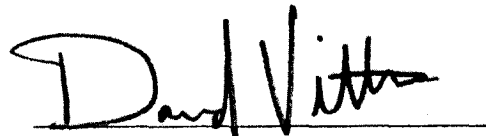
Enclosed are questions for you that have been submitted by Senators Boxer, Markey, and Vitter for the hearing record. Please submit your answers to these questions by COB April 17, 2014, to the attention of Mara Stark-Alcalá, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to Mara_Stark-Alcala@epw.senate.gov. To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Jason Albritton of the Majority Staff at (202) 224-8832, or Bryan Zumwalt of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,



Barbara Boxer
Chairman



David Vitter
Ranking Member

Environment and Public Works Committee Hearing
March 6, 2014
Follow-Up Questions for Written Submission

Questions for Stanislaus

Questions from:

Senator Barbara Boxer

1. Executive Order 13650, Section 4(a) required the Working Group to deploy, within 45 days, a pilot program, involving the EPA, OSHA, DHS, and any other appropriate agency, to validate best practices and to test innovative methods for Federal interagency collaboration regarding chemical facility safety and security, including innovative and effective methods of collecting, storing, and using facility information, stakeholder outreach, inspection planning, and, as appropriate, joint inspection efforts. With respect to the pilot program, which was deployed in EPA Region 2, please identify the best practices that are being validated and innovative methods that are being tested.
2. Executive Order 13650, Section 2(c) requires the Working Groups to provide, within 270 days, a status report to the President on the efforts to implement the EO. Given that this status report will identify a number of plans and proposals that will be implemented after the status report is due, does the Working Group intend to continue to meet and provide subsequent status reports to the President on the implementation of those plans and proposals? Will EPA commit to providing quarterly status updates to this Committee on the implementation of the Executive Order actions?

Question with Senator Edward J. Markey

3. Mr. Stanislaus, Executive Order 13650 ordered a number of specific actions to be completed by the Working Group. For the following list of actions whose deadlines for completion have passed, please indicate: (1) whether the action was completed; (2) if so, provide a copy of the plan, assessment, list, analysis, recommendations, proposal, options, determination, Request for Information, or Solicitation of Public Input/Comment; and, (3) if not, indicate the date on which the action will be completed. In each response, describe how the Working Group had addressed each specific element within each of the specific actions required by the Executive Order.
 - a. The **plan** to support and further enable efforts by State regulators, State, local, and tribal emergency responders, chemical facility owners and operators, and local and tribal communities to work together to improve chemical facility safety and security. (Sec. 3(a); Within 135 days).
 - b. The **assessment** conducted by the Attorney General, through the head of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), into the feasibility of sharing data related to the storage of explosive materials with State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), Tribal Emergency Planning Committees (TEPCs). (Sec. 3(b); Within 90 days).
 - c. The **assessment** conducted by the Secretary of Homeland Security into the feasibility of sharing Chemical Facility Anti-Terrorism Standards (CFATS) data with SERCs, TEPCs, and LEPCs on a categorical basis. (Sec. 3(c); Within 90 days).

- d. A **list** of any changes determined to be needed to existing memorandums of understanding (MOUs) and processes between EPA and CSB, ATF and CSB, and the Occupational Safety and Health Administration (OSHA) and CSB for timely and full disclosure of information. Please provide copies of the current drafts of the revised MOUs; or, if it was deemed to be appropriate by the Working Group, a draft of the single model MOU developed with CSB in lieu of existing agreements. (Sec. 4(c); Within 90 days).
- e. The **analysis**, including **recommendations**, on the potential to improve information collection by and sharing between agencies to help identify chemical facilities which may not have provided all required information or may be non-compliant with Federal requirements to ensure chemical facility safety. (Sec. 5(a); Within 90 days).
- f. The **proposal** for a coordinated, flexible data-sharing process which can be utilized to track data submitted to agencies for federally regulated chemical facilities, including locations, chemicals, regulated entities, previous infractions, and other relevant information (Sec. 5(b); Within 180 days).
- g. The **recommendations** for possible changes to streamline and otherwise improve data collection to meet the needs of the public and Federal, State, local, and tribal agencies (including those charged with protecting workers and the public), consistent with the Paperwork Reduction Act and other relevant authorities, including opportunities to lessen the reporting burden on regulated industries. (Sec. 5(c); Within 180 days).
- h. The **options** developed for improved chemical facility safety and security that identifies improvements to existing risk management practices through agency programs, private sector initiatives, Government guidance, outreach, standards, and regulations. (Sec. 6(a)(i); Within 90 days).
- i. The **list** of potential regulatory and legislative proposals to improve the safe and secure storage, handling, and sale of ammonium nitrate and identify ways in which ammonium nitrate safety and security can be enhanced under existing authorities. (Sec. 6(b); Within 90 days).
- j. The **determination** of whether the EPA's Risk Management Program (RMP) and the OSHA's Process Safety Management Standard (PSM) can and should be expanded to address additional regulated substances and types of hazards, and the **plan**, including a timeline and resource requirements, to expand, implement, and enforce the RMP and PSM in a manner that addresses the additional regulated substances and types of hazards. (Sec. 6(c); Within 90 days).
- k. The **list** of chemicals, including poisons and reactive substances, that should be considered for addition to the CFATS Chemicals of Interest list. (Sec. 6(d); Within 90 days).
- l. The **list** of changes that need to be made in the retail and commercial grade exemptions in the PSM Standard and the Request for Information designed to identify issues related to modernization of the PSM Standard and related standards necessary to meet the goal of preventing major chemical accidents. (Sec. 6(e); Within 90 days).

Senator Edward J. Markey

1. In 2009, during consideration of H.R. 2868, the Administration went through an inter-agency process to establish policy principles related to the use of inherently safer technology (IST). Those principles are pasted below, and were delivered in Congressional testimony by Peter S. Silva, then-Assistant Administrator for Water at EPA as well as a witness representing the Department of Homeland Security. While these principles related to a piece of legislation that was not enacted and thus also not referred to in E.O. 13650, some of the principles do represent general policy statements:
 - “The Administration supports consistency of IST approaches for facilities regardless of sector.”
 - “The Administration believes that all high-risk chemical facilities, Tiers 1-4, should assess IST methods and report the assessment in the facilities’ site security plans. Further, the appropriate regulatory entity should have the authority to require facilities posing the highest degree of risk (Tiers 1 and 2) to implement IST method(s) if such methods enhance overall security, are feasible, and, in the case of water sector facilities, consider public health and environmental requirements.”
 - “For Tier 3 and 4 facilities, the appropriate regulatory entity should review the IST assessment contained in the site security plan. The entity should be authorized to provide recommendations on implementing IST, but it would not require facilities to implement the IST methods.”
 - “The Administration believes that flexibility and staggered implementation would be required in implementing this new IST policy. DHS, in coordination with EPA, would develop an IST implementation plan for timing and phase-in at water facilities designated as high-risk chemical facilities. DHS would develop an IST implementation plan for high-risk chemical facilities in all other applicable sectors.”
- a. Does the Administration continue to believe that all high-risk chemical facilities should assess IST methods and report the assessment to the federal government? If not, why not (and please provide copies of documents that establish the Administration’s new policy)?
- b. Does the Administration continue to believe that regulators should have the authority to direct the highest risk chemical facilities to implement IST methods if such methods enhance overall security, are feasible, and, in the case of water sector facilities, consider public health and environmental requirements? If not, why not (and please provide copies of documents that establish the Administration’s new policy)?

Senator David Vitter

1. I would appreciate a yes or no answer on where you and the Agency currently stand with regards to regulating ammonium nitrate under the Clean Air Act RMP program. Do you and the Agency still stand by your response to Senator Boxer's April 30th letter on the incident in West, TX that ammonium nitrate fertilizer does not meet the criteria for substances regulated under the Clean Air Act RMP program?
2. The RMP program uses models in order to assess accidental chemical release risks. These models are designed specifically for air releases, not explosions. Given that ammonium nitrate is not released into the air like other RMP managed chemicals, if EPA were to regulate ammonium nitrate under the RMP program, would it have to totally redo or create new models?
3. You mentioned in your testimony, the President's Executive Order required the working group to develop a pilot program to "validate best practices and to test innovative methods for Federal interagency collaboration." How long do you believe we need to allow this pilot program to play out in order to use its results to inform policy changes or new rules and regulations?
4. The current RMP program regulates approximately 13,000 RMP facilities nationwide including family owned and operated businesses like bakeries, food storage and processing facilities, dry cleaners, hair stylists, and distribution warehouses. How do you think all these small businesses might respond to federal mandates for IST?
5. Does EPA have the resources to add new compliance requirements to regulate IST under RMP?
6. Does EPA have staff qualified to evaluate this wide range of processes and facilities for purposes of an IST requirement?
7. Just a year ago, the EPA IG found that "15 of the 45 RMP inspectors nationwide received inspector credentials without documentation indicating that they met minimum training requirements. Further, six of the 12 supervisors did not meet minimum training requirements. EPA's management controls did not detect or prevent the cases of missed or undocumented training. Identified also were weaknesses in controls included limitations in training tracking systems and a lack of procedures to ensure that supervisors met their training requirements. Also, contracts and cooperative agreements for inspection services did not include training requirements and EPA guidance did not establish minimum guidelines for the scope of inspections. Further, EPA did not have a process to monitor the quality of inspections. And generally, inspection reports did not explain the extent to which the inspectors reviewed specific elements of a covered process to determine compliance." Can you please explain what steps EPA has taken to address these concerns? Given the current shortcomings within the RMP and its inspectors, how can creating any new complicated regulatory requirements prior to fixing any previous issues possibly provide greater safety and more compliance?
8. If IST were to be mandated in regulations, how will it be measured?
9. The EO was specifically created to get agencies to work together since the tragic incident in West, Texas – what progress has been made by your agencies/departments to help identify outliers? How many outliers have you identified since the West, Texas incident?
10. Has the Compliance Assistance part of OECA been involved with the listening sessions and what are they doing to help?

11. Is EPA working with the SBA and the US Chamber to reach out to smaller communities/businesses?
12. Has EPA reached out to the regulated community on any potential changes to the LEPC program?
13. Perhaps one of the most helpful things that can be done to prevent future accidents like the explosion in West, TX is to ensure that the entire regulated community has an understanding of existing rules and regulations and understands how to comply. What is EPA doing to help in compliance assistance and awareness and marketing compliance guidance material? Have you increased compliance assistance activities since West?
14. Or, you can try the approach that RMP is intended to decrease the risk of accidental airborne releases of chemicals that could harm the public. Assuming an IST requirement were implemented under RMP, would such a requirement be allowed to consider workplace safety impacts of the technologies? What about impacts of security from terrorism? Or on transportation of chemicals to and from the facility? Aren't these all areas outside of EPS jurisdiction under RMP, yet factors that a facility considers when doing a holistic review of its processes? Why then would an IST component of RMP be useful?
15. Does EPA believe that the facilities in West, TX and West Virginia were compliant with all existing rules and regulations at the federal and state level? If not, can you please list what rules and regulations were violated? If in fact rules and regulations were not followed, would it be fair to say that ensuring facilities were compliant with current rules could be just as if not more effective than creating additional rules?
16. What would you estimate would be the resources required for a regulatory agency to evaluate and identify adequate IST considerations for all chemical processes and facilities?
17. How would small companies such as West Texas and Freedom Industries perform IST evaluations given the complexity and size of such an analysis?
18. How would an IST regulation reach companies and plant sites that are not aware of, have chosen not to comply with, or lack the understanding of what is already in the regulations?
19. How do you view IST as the method to improve safety? The examples given to date in the EO 13650 and in statements by the CSB discuss incidents that were the result of lack of enforcement of existing regulations. Would it not be more cost effective to invest in outreach, educational training, cooperative industry-government initiatives, and enforcement of existing regulations than to develop complex and impracticable new regulations?

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

March 27, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

Thank you for agreeing to testify on Wednesday, April 2, 2014, at 10:00 a.m. in 2123 Rayburn House Office Building, at the Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy joint hearing entitled "The Fiscal Year 2015 EPA Budget."

The attached documents provide important details concerning the preparation and presentation of your testimony.

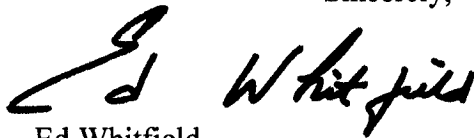
- The first attachment describes the form your testimony must take.
- The second attachment provides you with Electronic Format Guidelines that detail how to file testimony electronically.
- The third attachment provides you the Rules for the Committee on Energy and Commerce.
- The fourth attachment provides you with a Truth-in-Testimony Disclosure form and a Truth-in-Testimony instruction sheet.

Please be aware that, in accordance with the Committee's usual practice, witnesses have a right to be represented by counsel, who may advise the witnesses on their Constitutional rights, but cannot testify. In addition, hearings are open to audio, video, and photographic coverage by accredited press representatives only.

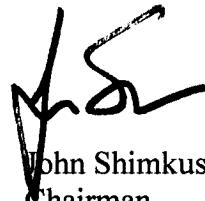
The Honorable Gina McCarthy
Page 2

If you have any questions concerning any aspect of your testimony, please contact Mary Neumayr, David McCarthy, or Tom Hassenboehler of the Energy and Commerce Committee staff at (202) 225-2927.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Whitfield".

Ed Whitfield
Chairman
Subcommittee on Energy and Power

A handwritten signature in black ink, appearing to read "John Shimkus".

John Shimkus
Chairman
Subcommittee on Environment
and the Economy

Enclosures: (1) Form of Testimony
(2) Electronic Format Guidelines
(3) Rules for the Committee on Energy and Commerce
(4) Truth-in-Testimony Disclosure form

**THE FORM OF TESTIMONY
BEFORE THE COMMITTEE ON ENERGY AND COMMERCE**

Written Statement: You are requested to submit a written statement, which may be of any reasonable length and may contain supplemental materials. However, please be aware that the Committee cannot guarantee that supplemental material will be included in the printed hearing record. Your written statement should be typed, double spaced, and should include a one-page summary of the major points you wish to make.

Pursuant to Rule 3(c) of the Rules of the Committee, please provide your written statement no later than two business days in advance of your appearance. This will allow Members and staff the opportunity to review your testimony.

Oral Presentation: You will have an opportunity to present an oral summary of your testimony to the Committee. To ensure sufficient time for Members to ask questions, your oral presentation should be limited to five minutes.

Printed Hearing Transcript: Rule XI, clause 2(e)(1)(A) of the Rules of the House requires the Committee to keep a written record of committee hearings which is a substantially verbatim account of remarks made during the proceedings, subject only to technical, grammatical, and typographical corrections. Your testimony, the transcript of the hearing, and any other material that the Committee agrees to include in the hearing record (subject to space limitations) will be printed as a record of the hearing.

GUIDELINES FOR THE ELECTRONIC SUBMISSION OF CONGRESSIONAL TESTIMONY

The Rules and procedures of the Energy and Commerce Committee require each witness to submit their testimony in an electronic format prescribed by the Chairman. Testimony submitted in electronic form will be used to produce the printed hearing record, and will be converted to HTML or Adobe Portable Document Format (PDF) and posted to the Committee on Energy and Commerce website at <http://energycommerce.house.gov/>. Your compliance with this requirement will facilitate the distribution of your testimony and help the Committee to minimize the costs of printing the hearing record.

Materials submitted to the Committee must be formatted in Microsoft Word.

Please e-mail your testimony to the Legislative Clerk at Nick.Abraham@mail.house.gov. In addition, please include the following in the body of your e-mail: (1) Witness Name, (2) Witness Organization, (3) Name and Date of Hearing, and (4) Subcommittee of Jurisdiction.

The Committee cannot accept testimony submitted on a disk or flash drive.

Committee on Energy and Commerce
U.S. House of Representatives

Witness Disclosure Requirement - "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

1. Your Name:		
2. Are you testifying on behalf of the Federal, or a State or local government entity?	Yes	No
3. Are you testifying on behalf of an entity that is not a government entity?	Yes	No
4. Other than yourself, please list which entity or entities you are representing: 		
5. Please list any Federal grants or contracts (including subgrants or subcontracts) that <u>you or the entity you represent have received</u> on or after October 1, 2011: 		
6. If your answer to the question in item 3 in this form is "yes," please describe your position or representational capacity with the entity or entities you are representing: 		
7. If your answer to the question in item 3 is "yes," do any of the entities disclosed in item 4 have parent organizations, subsidiaries, or partnerships that you are not representing in your testimony?	Yes	No
8. If the answer to the question in item 3 is "yes," please list any Federal grants or contracts (including subgrants or subcontracts) that were received by the entities listed under the question in item 4 on or after October 1, 2011, that exceed 10 percent of the revenue of the entities in the year received, including the source and amount of each grant or contract to be listed: 		
9. Please attach your curriculum vitae to your completed disclosure form. 		

Signature: _____ **Date:** _____

INSTRUCTIONS FOR COMPLETING THE TRUTH-IN-TESTIMONY DISCLOSURE FORM

In General. The form on the reverse side of the page is intended to assist witnesses appearing before the Committee on Energy and Commerce in complying with Rule XI, clause 2(g) of the Rules of the House of Representatives. The rule requires that:

In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of any Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.

Please complete the form in accordance with these directions.

1. ***Name (Item 1 on the form).*** Please provide the name of the witness in the box at the top of the form.
2. ***Governmental Entity (Item 2).*** Please check the box indicating whether or not the witness is testifying on behalf of a government entity, such as a Federal department or agency, or a State or local department, agency, or jurisdiction. Trade or professional associations of public officials are not considered to be governmental organizations.
3. ***Nongovernmental Entity (Item 3).*** Please check the box indicating whether or not the witness is testifying on behalf of an entity that is not a governmental entity.
4. ***Entity(ies) to be Represented (Item 4).*** Please list all entities on whose behalf the witness is testifying.
5. ***Grants and Contracts (Item 5).*** Please list any Federal grants or contracts (including subgrants or subcontracts) that the witness personally has received from the Federal Government on or after October 1, 2011.
6. ***Representational Capacity (Item 6).*** If the answer to the question in item 2 is yes, please characterize the capacity in which the witness is testifying on behalf of the entities listed in item 4.
7. ***Affiliated Entities (Item 7).*** Please indicate whether the entity on whose behalf the witness is testifying has parent organizations, subsidiaries, or partnerships that are not represented by the testimony of the witness.
8. ***Grants and Contracts (Item 8).*** Please disclose grants and contracts as directed in item 7.
9. ***Curriculum Vitae (Item 9).*** Please attach your CV to your completed disclosure form.
10. ***Submission.*** Please sign and date the form in the appropriate place. Please submit this form with your written testimony. Please note that under the Committee's rules, copies of a written statement of your proposed testimony must be submitted before the commencement of the hearing. To the greatest extent practicable, please also provide a copy in electronic format according to the Electronic Format Guidelines that accompany these instructions.

RULES OF THE COMMITTEE ON ENERGY AND COMMERCE

113TH CONGRESS

RULE 1. GENERAL PROVISIONS

(a) Rules of the Committee. The Rules of the House are the rules of the Committee on Energy and Commerce (the “Committee”) and its subcommittees so far as is applicable.

(b) Rules of the Subcommittees. Each subcommittee of the Committee is part of the Committee and is subject to the authority and direction of the Committee and to its rules so far as is applicable. Written rules adopted by the Committee, not inconsistent with the Rules of the House, shall be binding on each subcommittee of the Committee.

RULE 2. MEETINGS

(a) Regular Meeting Days. The Committee shall meet on the fourth Tuesday of each month at 10 a.m., for the consideration of bills, resolutions, and other business, if the House is in session on that day. If the House is not in session on that day and the Committee has not met during such month, the Committee shall meet at the earliest practicable opportunity when the House is again in session. The chairman of the Committee may, at his discretion, cancel, delay, or defer any meeting required under this section, after consultation with the ranking minority member.

(b) Additional Meetings. The chairman may call and convene, as he considers necessary, additional meetings of the Committee for the consideration of any bill or resolution pending before the Committee or for the conduct of other Committee business. The Committee shall meet for such purposes pursuant to that call of the chairman.

(c) Notice. The date, time, place, and subject matter of any meeting of the Committee scheduled on a Tuesday, Wednesday, or Thursday when the House will be in session shall be announced at least 36 hours (exclusive of Saturdays, Sundays, and legal holidays except when the House is in session on such days) in advance of the commencement of such meeting. The date, time, place, and subject matter of other meetings when the House is in session shall be announced to allow Members to have at least three days notice (exclusive of Saturdays, Sundays, and legal holidays except when the House is in session on such days) of such meeting. The date, time, place, and subject matter of all other meetings shall be announced at least 72 hours in advance of the commencement of such meeting.

(d) Agenda. The agenda for each Committee meeting, setting out all items of business to be considered, shall be provided to each member of the Committee at least 36 hours in advance of such meeting.

(e) Availability of Texts. No bill, recommendation, or other matter shall be considered by the Committee unless the text of the matter, together with an explanation, has been available to members of the Committee for three days (or 24 hours in the case of a substitute for introduced legislation). Such explanation shall include a summary of the major provisions of the legislation,

an explanation of the relationship of the matter to present law, and a summary of the need for the legislation.

(f) Waiver. The requirements of subsections (c), (d), and (e) may be waived by a majority of those present and voting (a majority being present) of the Committee or by the chairman with the concurrence of the ranking member, as the case may be.

RULE 3. HEARINGS

(a) Notice. The date, time, place, and subject matter of any hearing of the Committee shall be announced at least one week in advance of the commencement of such hearing, unless a determination is made in accordance with clause 2(g)(3) of Rule XI of the Rules of the House that there is good cause to begin the hearing sooner.

(b) Memorandum. Each member of the Committee shall be provided, except in the case of unusual circumstances, with a memorandum at least 48 hours before each hearing explaining (1) the purpose of the hearing and (2) the names of any witnesses.

(c) Witnesses. (1) Each witness who is to appear before the Committee shall file with the clerk of the Committee, at least two working days in advance of his or her appearance, sufficient copies, as determined by the chairman of the Committee of a written statement of his or her proposed testimony to provide to members and staff of the Committee, the news media, and the general public. Each witness shall, to the greatest extent practicable, also provide a copy of such written testimony in an electronic format prescribed by the chairman. Each witness shall limit his or her oral presentation to a brief summary of the argument. The chairman of the Committee or the presiding member may waive the requirements of this paragraph or any part thereof.

(2) To the greatest extent practicable, the written testimony of each witness appearing in a nongovernmental capacity shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of any federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two preceding fiscal years by the witness or by an entity represented by the witness.

(d) Questioning. (1) The right to interrogate the witnesses before the Committee shall alternate between majority and minority members. Each member shall be limited to 5 minutes in the interrogation of witnesses until such time as each member who so desires has had an opportunity to question witnesses. No member shall be recognized for a second period of 5 minutes to interrogate a witness until each member of the Committee present has been recognized once for that purpose. The chairman shall recognize in order of appearance members who were not present when the meeting was called to order after all members who were present when the meeting was called to order have been recognized in the order of seniority on the Committee.

(2) The chairman, with the concurrence of the ranking minority member, or the Committee by motion, may permit an equal number of majority and minority members to question a witness for a specified, total period that is equal for each side and not longer than thirty minutes for each side. The chairman with the concurrence of the ranking minority member, or the Committee by

motion, may also permit committee staff of the majority and minority to question a witness for a specified, total period that is equal for each side and not longer than thirty minutes for each side.

(3) Each member may submit to the chairman of the Committee additional questions for the record, to be answered by the witnesses who have appeared. Each member shall provide a copy of the questions in an electronic format to the clerk of the Committee no later than ten business days following a hearing. The chairman shall transmit all questions received from members of the Committee to the appropriate witness and include the transmittal letter and the responses from the witnesses in the hearing record. After consultation with the ranking minority member, the chairman is authorized to close the hearing record no earlier than 120 days from the date the questions were transmitted to the appropriate witness.

RULE 4. VICE CHAIRMEN; PRESIDING MEMBER

The chairman shall designate a member of the majority party to serve as vice chairman of the Committee, and shall designate a majority member of each subcommittee to serve as vice chairman of each subcommittee. The vice chairman of the Committee or subcommittee, as the case may be, shall preside at any meeting or hearing during the temporary absence of the chairman. If the chairman and vice chairman of the Committee or subcommittee are not present at any meeting or hearing, the ranking member of the majority party who is present shall preside at the meeting or hearing.

RULE 5. OPEN PROCEEDINGS

Except as provided by the Rules of the House, each meeting and hearing of the Committee for the transaction of business, including the markup of legislation, and each hearing, shall be open to the public, including to radio, television, and still photography coverage, consistent with the provisions of Rule XI of the Rules of the House.

RULE 6. QUORUM

Testimony may be taken and evidence received at any hearing at which there are present not fewer than two members of the Committee in question. A majority of the members of the Committee shall constitute a quorum for those actions for which the House Rules require a majority quorum. For the purposes of taking any other action, one-third of the members of the Committee shall constitute a quorum.

RULE 7. OFFICIAL COMMITTEE RECORDS

(a)(1) Journal. The proceedings of the Committee shall be recorded in a journal which shall, among other things, show those present at each meeting, and include a record of the vote on any question on which a record vote is demanded and a description of the amendment, motion, order, or other proposition voted. A copy of the journal shall be furnished to the ranking minority member.

(2) Record Votes. A record vote may be demanded by one-fifth of the members present or, in the

apparent absence of a quorum, by any one member. No demand for a record vote shall be made or obtained except for the purpose of procuring a record vote or in the apparent absence of a quorum. The result of each record vote in any meeting of the Committee shall be made publicly available in electronic form on the Committee's website and in the Committee office for inspection by the public, as provided in Rule XI, clause 2(e) of the Rules of the House, within 24 hours. Such result shall include a description of the amendment, motion, order, or other proposition, the name of each member voting for and each member voting against such amendment, motion, order, or proposition, and the names of those members of the committee present but not voting. The chairman, with the concurrence of the ranking minority member, may from time to time postpone record votes ordered on amendments to be held at a time certain during the consideration of legislation.

(b) **Archived Records.** The records of the Committee at the National Archives and Records Administration shall be made available for public use in accordance with Rule VII of the Rules of the House. The chairman shall notify the ranking minority member of any decision, pursuant to clause 3 (b)(3) or clause 4 (b) of the Rule, to withhold a record otherwise available, and the matter shall be presented to the Committee for a determination on the written request of any member of the Committee. The chairman shall consult with the ranking minority member on any communication from the Archivist of the United States or the Clerk of the House concerning the disposition of noncurrent records pursuant to clause 3(b) of the Rule.

RULE 8. SUBCOMMITTEES

(a) **Establishment.** There shall be such standing subcommittees with such jurisdiction and size as determined by the majority party caucus of the Committee. The jurisdiction, number, and size of the subcommittees shall be determined by the majority party caucus prior to the start of the process for establishing subcommittee chairmanships and assignments.

(b) **Powers and Duties.** Each subcommittee is authorized to meet, hold hearings, receive testimony, mark up legislation, and report to the Committee on all matters referred to it. Subcommittee chairmen shall set hearing and meeting dates only with the approval of the chairman of the Committee with a view toward assuring the availability of meeting rooms and avoiding simultaneous scheduling of Committee and subcommittee meetings or hearings whenever possible.

(c) **Ratio of Subcommittees.** The majority caucus of the Committee shall determine an appropriate ratio of majority to minority party members for each subcommittee and the chairman shall negotiate that ratio with the minority party, provided that the ratio of party members on each subcommittee shall be no less favorable to the majority than that of the full Committee, nor shall such ratio provide for a majority of less than two majority members.

(d) **Selection of Subcommittee Members.** Prior to any organizational meeting held by the Committee, the majority and minority caucuses shall select their respective members of the standing subcommittees.

(e) **Ex Officio Members.** The chairman and ranking minority member of the Committee shall be

ex officio members with voting privileges of each subcommittee of which they are not assigned as members and may be counted for purposes of establishing a quorum in such subcommittees. The minority chairman emeritus shall be an ex officio member without voting privileges of each subcommittee of which the minority chairman emeritus is not assigned as a member and shall not be counted for purposes of establishing a quorum on any such subcommittee.

RULE 9. OPENING STATEMENTS

(a) Written Statements. All written opening statements at hearings and business meetings conducted by the committee shall be made part of the permanent record.

(b) Length. (1) At full committee hearings, the chairman and ranking minority member shall be limited to 5 minutes each for an opening statement, and may designate another member to give an opening statement of not more than 5 minutes. At subcommittee hearings, the subcommittee chairman and ranking minority member of the subcommittee shall be limited to 5 minutes each for an opening statement. In addition, the full committee chairman and ranking minority member shall each be allocated 5 minutes for an opening statement for themselves or their designees.

(2) At any business meeting of the Committee, statements shall be limited to 5 minutes each for the chairman and ranking minority member (or their respective designee) of the Committee or subcommittee, as applicable, and 3 minutes each for all other members. The chairman may further limit opening statements for Members (including, at the discretion of the Chairman, the chairman and ranking minority member) to one minute.

RULE 10. REFERENCE OF LEGISLATION AND OTHER MATTERS

All legislation and other matters referred to the Committee shall be referred to the subcommittee of appropriate jurisdiction within two weeks of the date of receipt by the Committee unless action is taken by the full Committee within those two weeks, or by majority vote of the members of the Committee, consideration is to be by the full Committee. In the case of legislation or other matter within the jurisdiction of more than one subcommittee, the chairman of the Committee may, in his discretion, refer the matter simultaneously to two or more subcommittees for concurrent consideration, or may designate a subcommittee of primary jurisdiction and also refer the matter to one or more additional subcommittees for consideration in sequence (subject to appropriate time limitations), either on its initial referral or after the matter has been reported by the subcommittee of primary jurisdiction. Such authority shall include the authority to refer such legislation or matter to an ad hoc subcommittee appointed by the chairman, with the approval of the Committee, from the members of the subcommittees having legislative or oversight jurisdiction.

RULE 11. MANAGING LEGISLATION ON THE HOUSE FLOOR

The chairman, in his discretion, shall designate which member shall manage legislation reported by the Committee to the House.

RULE 12. COMMITTEE PROFESSIONAL AND CLERICAL STAFF APPOINTMENTS

(a) **Delegation of Staff.** Whenever the chairman of the Committee determines that any professional staff member appointed pursuant to the provisions of clause 9 of Rule X of the House of Representatives, who is assigned to such chairman and not to the ranking minority member, by reason of such professional staff member's expertise or qualifications will be of assistance to one or more subcommittees in carrying out their assigned responsibilities, he may delegate such member to such subcommittees for such purpose. A delegation of a member of the professional staff pursuant to this subsection shall be made after consultation with subcommittee chairmen and with the approval of the subcommittee chairman or chairmen involved.

(b) **Minority Professional Staff.** Professional staff members appointed pursuant to clause 9 of Rule X of the House of Representatives, who are assigned to the ranking minority member of the Committee and not to the chairman of the Committee, shall be assigned to such Committee business as the minority party members of the Committee consider advisable.

(c) **Additional Staff Appointments.** In addition to the professional staff appointed pursuant to clause 9 of Rule X of the House of Representatives, the chairman of the Committee shall be entitled to make such appointments to the professional and clerical staff of the Committee as may be provided within the budget approved for such purposes by the Committee. Such appointee shall be assigned to such business of the full Committee as the chairman of the Committee considers advisable.

(d) **Sufficient Staff.** The chairman shall ensure that sufficient staff is made available to each subcommittee to carry out its responsibilities under the rules of the Committee.

(e) **Fair Treatment of Minority Members in Appointment of Committee Staff.** The chairman shall ensure that the minority members of the Committee are treated fairly in appointment of Committee staff.

(f) **Contracts for Temporary or Intermittent Services.** Any contract for the temporary services or intermittent service of individual consultants or organizations to make studies or advise the Committee or its subcommittees with respect to any matter within their jurisdiction shall be deemed to have been approved by a majority of the members of the Committee if approved by the chairman and ranking minority member of the Committee. Such approval shall not be deemed to have been given if at least one-third of the members of the Committee request in writing that the Committee formally act on such a contract, if the request is made within 10 days after the latest date on which such chairman or chairmen, and such ranking minority member or members, approve such contract.

RULE 13. SUPERVISION, DUTIES OF STAFF

(a) **Supervision of Majority Staff.** The professional and clerical staff of the Committee not assigned to the minority shall be under the supervision and direction of the chairman who, in consultation with the chairmen of the subcommittees, shall establish and assign the duties and responsibilities of such staff members and delegate such authority as he determines appropriate.

(b) Supervision of Minority Staff. The professional and clerical staff assigned to the minority shall be under the supervision and direction of the minority members of the Committee, who may delegate such authority as they determine appropriate.

RULE 14. COMMITTEE BUDGET

(a) Administration of Committee Budget. The chairman of the Committee, in consultation with the ranking minority member, shall for the 113th Congress attempt to ensure that the Committee receives necessary amounts for professional and clerical staff, travel, investigations, equipment and miscellaneous expenses of the Committee and the subcommittees, which shall be adequate to fully discharge the Committee's responsibilities for legislation and oversight..

(b) Monthly Expenditures Report. Committee members shall be furnished a copy of each monthly report, prepared by the chairman for the Committee on House Administration, which shows expenditures made during the reporting period and cumulative for the year by the Committee and subcommittees, anticipated expenditures for the projected Committee program, and detailed information on travel.

RULE 15. BROADCASTING OF COMMITTEE HEARINGS

Any meeting or hearing that is open to the public may be covered in whole or in part by radio or television or still photography, subject to the requirements of clause 4 of Rule XI of the Rules of the House. The coverage of any hearing or other proceeding of the Committee or any subcommittee thereof by television, radio, or still photography shall be under the direct supervision of the chairman of the Committee, the subcommittee chairman, or other member of the Committee presiding at such hearing or other proceeding and may be terminated by such member in accordance with the Rules of the House.

RULE 16. SUBPOENAS AND INTERVIEWS

(a) Subpoenas. The chairman of the Committee may, after consultation with the ranking minority member, authorize and issue a subpoena under clause 2(m) of Rule XI of the House. If the ranking minority member objects to the proposed subpoena in writing, the matter shall be referred to the Committee for resolution. The chairman of the Committee may authorize and issue subpoenas without referring the matter to the Committee for resolution during any period for which the House has adjourned for a period in excess of 3 days when, in the opinion of the chairman, authorization and issuance of the subpoena is necessary. The chairman shall report to the members of the Committee on the authorization and issuance of a subpoena during the recess period as soon as practicable but in no event later than one week after service of such subpoena.

(b) Interviews. The chairman of the Committee may authorize committee staff to conduct transcribed interviews in the furtherance of a Committee investigation.

BARBARA BOXER, CALIFORNIA, CHAIRMAN

THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
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EDWARD J. MARKEY, MASSACHUSETTS

DAVID VITTER, LOUISIANA
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JOHN CARRASSO, WYOMING
JEFF SESSIONS, ALABAMA
MIKE CRAPO, IDAHO
ROGER WICKER, MISSISSIPPI
BOB BOOZMAN, ARKANSAS
BEN FISCHER, NEBRASKA

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETHA POIRER, MAJORITY STAFF DIRECTOR
ZAK BARK, REPUBLICAN STAFF DIRECTOR

April 24, 2014

Ann E. Dunkin
c/o Laura Vaught
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

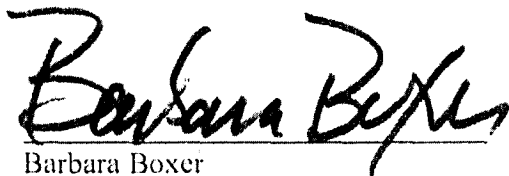
Dear Ms. Dunkin:

Thank you for appearing before the Committee on Environment and Public Works on April 8, 2014 at the hearing entitled, "Hearing on the Nominations of Janet G. McCabe to be the Assistant Administrator for Air and Radiation of the U.S. Environmental Protection Agency (EPA), Ann E. Dunkin to be the Assistant Administrator for Environmental Information of the EPA, and Manuel H. Ehrlich, Jr., to be a Member of the Chemical Safety and Hazard Investigation Board." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

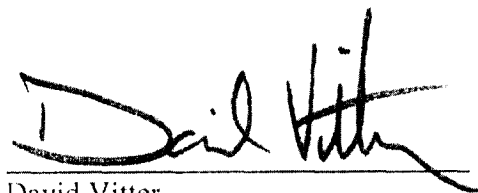
Enclosed are questions for you that have been submitted by Senators Vitter and Boozman for the hearing record. Please submit your answers to these questions by COB May 8, 2014, to the attention of Drew Kramer, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to Drew_Kramer@epw.senate.gov. To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact David Napoliello of the Majority Staff at (202) 224-8832, or Bryan Zumwalt of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,



Barbara Boxer
Chairman



David Vitter
Ranking Member

Environment and Public Works Committee Hearing
April 8, 2014
Follow-Up Questions for Written Submission

Questions for Dunkin

Questions from:

Senator David Vitter

1. On April 2, 2014, you met with my staff to discuss several concerns that I have with the performance of the Office of Environmental Information. In particular, my staff discussed the Office's shortcomings with regard to compliance with the Freedom of Information Act (FOIA) and timely responses to Congress as exemplified in EPA's failure to adequately respond to letters sent on April 29, 2013 and May 17, 2013 (attached). At that meeting, my staff requested that EPA implement an expedited timeframe to fully respond to the April letter, as nearly a full year has passed and the request has not yet been fulfilled. In addition, my staff requested that EPA finally produce correspondence between the agency and FOIA fee requestors, documents that were requested in last May's letter. What is the status of these requests?
2. I understand that EPA's process to respond to a Congressional request is cumbersome and inefficient. Your office has to identify the potential custodians, provide them with search terms, transfer self-identified documents to the FOIA office, and then turn the documents over to Congress after review. (See example of April 29, 2013 letter) This process is cumbersome and drains staff resources, while simultaneously hindering transparency. However, we know that the IG has the ability to directly access resources at the Office of Information Technology - plug in search terms - and obtain responsive documents fairly instantly. Will you commit to investigating how your office could transition away from the slow and cumbersome process currently employed by EPA, and towards a system that utilizes the technology EPA already has in place, and is used by the EPAIG, to speed up EPA's response time to Congressional inquiries? Will you commit to providing me a summary of your findings no later than one month after you are in office?

Senator John Boozman

- 1. Do you support allowing the public to participate in the nomination process for Science Advisory Board Members and to provide public comments?**
- 2. At times, SAB members have been involved both directly and indirectly in reviewing their own work. This violates principles outlined in the EPA's Peer Review Handbook. Do you agree that Board members should not participate in advisory activities that directly or indirectly involve review and evaluation of their own work?**
- 3. Do you believe that Science Advisory Board members with dissenting views should be empowered to make those views known to the public and to the EPA Administrator?**
- 4. Risk or hazard assessments include many of the most significant and consequential scientific undertakings at the EPA. Do you believe that EPA's Science Advisory Boards should review each of these assessments and provide advice and comment?**
- 5. Do you believe that Science Advisory Boards should be limited from providing non-scientific policy advice?**

BARBARA BOXER, CALIFORNIA, CHAIRMAN

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BENJAMIN L. CARDIN, MARYLAND
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DEB FISCHER, NEBRASKA

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA FORNER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

April 23, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave., NW
Washington, DC 20460

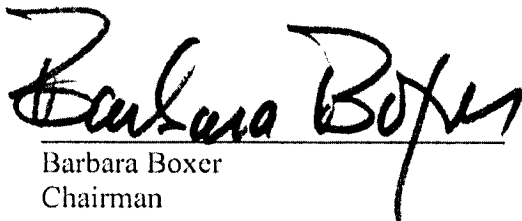
Dear Administrator McCarthy:

Thank you for appearing before the Committee on Environment and Public Works on March 26, 2014, at the hearing entitled, "Oversight Hearing on the Environmental Protection Agency's Fiscal Year 2015 Budget." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

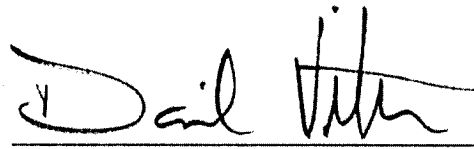
Enclosed are questions for you that have been submitted by Senators Boxer, Markey, Vitter, Wicker, and Fischer for the hearing record. Please submit your answers to these questions by COB May 7, 2014, to the attention of Nathan McCray, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to Nathan_McCray@epw.senate.gov. To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Jason Albritton of the Majority Staff at (202) 224-8832, or Bryan Zumwalt of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,



Barbara Boxer
Chairman



David Vitter
Ranking Member

Environment and Public Works Committee Hearing
March 26, 2014
Follow-Up Questions for Written Submission

Questions for McCarthy

Questions from:

Senator Barbara Boxer

1. Given the importance of limiting carbon pollution and addressing climate change, increasing EPA's FY2015 Budget to address climate change is critical. Can you please explain how increased funding for the Agency's climate change work will ensure that state governments can efficiently implement and comply with any planned or existing Clean Air Act standard that establishes limits on carbon pollution from stationary sources?
2. The EPA's FY 2015 Budget supports implementation of the President's Climate Action Plan by calling for limits under the Clean Air Act on carbon pollution from cars, trucks, and power plants. Are these agency actions consistent with the Supreme Court decision in *Massachusetts v. EPA* (2007) and more recent decisions from the U.S. Court of Appeals for the D.C. Circuit?
3. EPA's revolving loan programs for drinking and waste water infrastructure help to ensure that the water we drink is safe and that our lakes and rivers are clean. EPA's budget request cuts funds for these important programs. Can you please explain how EPA will ensure adequate investments in clean water and drinking water are being made?
4. The EPA has reported on the impressive and immediate health and environmental benefits of the National Diesel Emission Reduction Act Program, including significant reductions in air pollutants such as NO_x and Particulate Matter. I am concerned that the EPA's budget asks to eliminate funding for this very successful program. Can you please explain how the Agency will make new gains in reducing air pollution from diesel engines and how the Agency will ensure continuing public health and environmental benefits from such air pollution reductions?
5. The President's Executive Order on Chemical Safety directs the Federal Working Group to identify actions that will better protect people from hazards at chemical facilities. I recently held a hearing on the Executive Order and was concerned that the Working Group has identified few actions to improve oversight. I believe that we must move forward as rapidly as possible. Delay is unacceptable.

As a follow-up to the hearing, I asked the EPA witness to provide the Committee with a detailed explanation of how the Federal Working Group has met each of the required actions in the Executive Order and to provide the Committee with quarterly status updates on implementation of the Executive Order. Will you ensure that EPA responds to this request as soon as possible?

6. In December 2008, a devastating coal ash spill occurred in Kingston, Tennessee. More recently, an EPA-listed high hazard coal ash impoundment at a Duke Energy facility in North Carolina spilled into the Dan River threatening drinking water supplies down river from the facility. How will the Agency ensure that when it completes final rules concerning the disposal of coal ash later this year that there are adequate federal protections in place to protect communities near coal ash impoundments from this hazardous material?

7. EPA's Office of Inspector General recently completed an investigation of EPA's actions in the Parker County, Texas groundwater contamination case. OIG found that EPA acted appropriately when it issued an emergency order in that case, and when EPA lifted the order after the State agreed to investigate. However, OIG questioned the quality of data provided by Range Resources and whether residents in the community may still have unsafe drinking water. EPA agreed to take specific steps in response to the OIG's recommendation, including requesting additional information from Range Resources. Can you please provide an update on the status of EPA's implementation of the OIG's recommendations?
8. According to the Agency indoor radon is the nation's second leading cause of lung cancer and causes about 21,000 deaths each year. About one in 15 American homes contain high levels of radon. I am concerned that EPA's budget would cut funding for state and tribal grants to address this preventable cause of cancer. Can you please explain how the Agency will ensure that the public is properly protected from the threat of radon and how the public will have continued access to state and tribal programs that can assist them in reducing their risk of exposure to dangerous levels of radon?
9. I have been a strong supporter of EPA working to protect children's health from dangerous air and water pollution. EPA's budget increases environmental justice funding to improve environmental conditions in minority and low-income communities across the country and to enhance enforcement of clean air and other protections in at-risk communities, near schools and in other areas where children may be exposed to toxic pollution. Can you please describe how the Agency will use this budget request to strengthen environmental protections for these communities and enhance the environmental health of the country's most vulnerable populations?
10. In December 2013, in response to the OIG's Early Warning Reports in the John Beale fraud case, the EPA has taken a number of corrective actions to prevent future occurrences of such fraud. Can you please confirm your commitment to providing regular updates on the progress the Agency has made in addressing the issues raised in the OIG's report?

Senator Edward J. Markey

1. It's been nearly 4 years since the Deepwater Horizon drilling rig sank into the Gulf of Mexico causing an environmental catastrophe at a magnitude never seen in this country. In our frantic response to the oil that was gushing into the Gulf we used unprecedented amounts of chemical dispersants over an extended period of time. We also applied these dispersants under the water, in a way they were never intended to be used. Concerns about the toxicity and environmental impacts of the primary chemical dispersant used, known as Corexit, led the EPA to announce that it would be doing additional research and would propose changes to the list of approved chemical dispersants and other remediation agents.
 - a. When can we expect that these changes will be published?
 - b. Will these changes incorporate the results of the impacts of prolonged and/or subsurface use of dispersants?
2. The NPDES permit for the Pilgrim Nuclear Power Station has been administratively extended by EPA for almost 20 years. When will the EPA complete its work to update the permit in a comprehensive manner?
3. In 2011, EPA granted a three-year exemption from regulation under the Clean Air Act for carbon emissions from bioenergy facilities. EPA then commissioned an expert panel of the Science Advisory Board to review the Agency's proposed bioenergy carbon accounting framework. They found that EPA's framework needed to account for the important ongoing role that forests play in sequestering atmospheric carbon dioxide and that we cannot automatically assume biomass energy is carbon neutral. Basically, you can't cut down a 150 year old forest, burn it, and assume there's no net carbon impacts. In 2012, my home state of Massachusetts published final carbon accounting regulations using a methodology very similar to those recommended by the Science Advisory Board. Does EPA plan to incorporate these key science-based recommendations into whatever new rules are established to govern carbon emissions from bioenergy?

Senator David Vitter

Topic: John Beale and Internal Controls

1. During the hearing, you attributed the time lapse between when you first learned of John Beale's illegal bonus and when you finally cancelled the bonus to "it t[aking] a while to get to the bottom of the John Beale issue because he was a criminal that had systemically intended to defraud the agency." The January 12, 2011 memorandum you received from Scott Monroe detailed both how "EPA policy requires that OAR recertify the bonus annually and re-establish the bonus every three years" and how "EPA ha[d] no records to show that these recertifications occurred except for one in 2000."
 - a. Did it occur to you upon receipt of the January 12, 2011 memorandum that you had not ever signed annual certification paperwork for Beale's bonus despite having headed OAR at that point for a year and a half?
2. On July 16, 2010, Scott Monroe sent Beth Craig an email which stated unequivocally, "Regardless of the circumstances surrounding overpayment, OAR must submit a request if we intend to continue the retention bonus."
 - a. The email indicates that in order for Beale to continue to receive his bonus, it must be affirmatively recertified. Is this an accurate statement of EPA policy?
 - b. Did your office recertify the retention bonus?
 - c. If you were aware that he was receiving his bonus in error, and that they bonus had not been recertified, why did EPA continue to pay Beale the unearned wages?
3. The January 12, 2011 memorandum you received from Scott Monroe also noted that retention incentives require a showing that there exists a "'special agency need' to retain the employee's services" and a showing that the employee is "'likely to leave,'" a showing which requires a written offer for outside employment, both of which Monroe suggested that Beale "d[id] not appear to meet." Despite these obvious shortcomings, you allowed more than two years to pass before cancelling the bonus in February of 2013. During this time, Mr. Beale collected more than \$90,000 in unearned bonuses.
 - a. Why was further investigation before cancelling his bonus necessary when Scott Monroe had already demonstrated that the lack of necessary recertifications since 2000?
 - b. Why was further investigation before cancelling his bonus necessary when Scott Monroe had already indicated a lack of necessary documentation to meet the "likely to leave" requirement?
 - c. Given the high standard for receiving retention incentives, did you—as Mr. Beale's direct supervisor—believe that there existed a "'special agency need' to retain" Mr. Beale's services? If not, why was further investigation before cancelling his bonus necessary?
 - d. At the time you permitted the bonuses to continue, did you believe that Mr. Beale was "likely to leave" and had written evidence of outside job offers?

4. Despite the fact that you knew with certainty that the necessary criteria to receive a retention bonus had not been met two years before you took action to cancel the bonus, you had the audacity to assert the following: "[W]hat is true is I did pursue that issue [of Beale's illegal bonus] effectively, and I think the Agency was addressing it effectively."
 - a. Please provide your definition of "effective."
 - b. What would be an ineffective response to such clear warning signs?
5. What is the foundation of your claim that EPA responded to the issue of Beale's illegal bonus "effectively" when it was allowed to continue without the necessary recertification for more than a decade, during the last two years of which multiple officials were aware of its failure to meet multiple necessary criteria?
6. During the hearing, you responded to one of my questions ("Why, in early 2011 were you reluctant to finalize, to not cancel the bonus? Why were you reluctant to take action?") with the following response: "Actually, I understood that the issue was going to be referred to the Office of the Inspector General." According to the documents made available to the Committee, the first mention of even potentially referring the Beale matter to the OIG occurred only in spring of 2012.
 - a. Were you in fact aware of plans to refer the Beale matter to the OIG in 2011?
 - b. If so, please provide a detailed description of when and from whom you first heard of plans to refer Beale's compensation issues to the OIG, of whom you were aware had knowledge of the possibility that the Beale matter might be referred to the OIG, and of what you believed came of this plan to refer the matter to the OIG. Please also provide all documentation predating April 1, 2012 in your possession referring to Beale and the OIG in conjunction with each other.
 - c. If you incorrectly stated that you believed that the matter was to be referred to the IG, then why in fact were you reluctant to finalize the cancellation of Beale's bonus in early 2011?
7. During the hearing, I quoted from an email produced to me by the OIG from Susan Smith, a Team Leader in the Executive Resources Division of the Office of Administration and Resource Management, to Karen Higginbotham, the Director of the Executive Resources Division. In the email, Ms. Smith attests to Ms. Higginbotham that "Scott Monroe stopped by . . . and said . . . that Gina is reluctant to finalize [the cancellation of Beale's retention incentive bonus] unless OARM (Craig) gives her the okay that the White House is aware and there will not be any political fallout." You not only expressed unfamiliarity with the email and represented that you had never had a conversation with Ms. Smith, but also asserted that: 1.) you had never spoken with Scott Monroe about the White House in regards to the Beale bonus matter, 2.) you were never concerned "that the White House [would] look at political fallout," and 3.) you "never had concerns about the White House's interference."
 - a. Have you ever communicated with anyone at the White House about the Beale matter? If so, please describe these communications to the best of your ability, including the date of the interaction and the individual with whom you interacted. If any documentation exists of such communications, please provide them to the Committee.

- b. Did you ever communicate with Craig Hooks, Scott Monroe, or anyone else about the White House in connection to John Beale's misconduct? If so, please describe these communications to the best of your ability, including the date of the interaction and the individual with whom you interacted. If any documentation exists of such communications, please provide them to the Committee. If not, was Mr. Monroe fabricating these concerns?
 - c. Have you ever been concerned about the potential for "political fallout" from the Beale investigation? If so, what sort of "political fallout"? Please describe in detail.
 - d. Were you aware of anyone within EPA, or the Obama Administration more broadly, who was concerned about the potential for "political fallout" from the Beale investigation? If so, please identify these individuals and your impressions of their concerns.
 - e. Were any of your actions in the investigation of Beale's misconduct shaped by the potential for "political fallout"?
 - f. Why did you tell the OIG that the only "political fallout would have been during [your] confirmation hearing"? Were you concerned that Beale would be an obstacle to your confirmation as EPA Administrator?
8. During the hearing, you challenged my criticism of Beale being allowed to retire by noting that "every employee has their right to retirement" and that you are "sure he exercised that right."
 - a. Did you have cause to fire Beale in April 2013?
 - b. Did Mr. Beale have a "right" to retire?
 - c. Does every EPA employee facing potential discipline and/or termination have the "right" to retire with full benefits first?
9. During the hearing, you also challenged my criticism of Beale being allowed to retire by noting that he is currently in federal prison. This suggests that you view prosecution by the Department of Justice as a sufficient substitute for adequate internal EPA controls and actions. Is that an accurate reflection of your views?
10. How many EPA employees have been terminated during your tenure as Administrator? How many employees within the Office of Air and Radiation were terminated during your time as Assistant Administrator?
11. During the hearing, you responded to a question from Senator Whitehouse by describing Beale as an outlier who is not representative of the EPA workforce. Nevertheless, you told the OIG that "Beale 'walked on water at EPA' due to his work on the [Clean Air Act] and other policy issues in the early 1990s." Furthermore, during your time as his direct supervisor as Assistant Administrator, you effusively praised Beale in emails to the entire Office of Air and Radiation. Additionally, even as Beale was sentenced to 32 months in federal prison for his crimes, he was offered strong support from a number of current and former senior EPA employees. They submitted letters, which went much further than calling him "a good man." Indeed, they called him a "tower of fortitude" and a man whom they still "respected . . . immensely." One former colleague even said that "John is still one of the five people I would speed dial for help." How do you reconcile your claim that Beale was an outsider and not representative of the employees at

EPA within the Office of Air and Radiation, with the praise offered by senior EPA officials on Beale's behalf even after he was exposed?

12. As Assistant Administrator for OAR, you sent multiple staff-wide emails praising Beale's performance. In one email you referred to his frequent absences from work and stated "we are keeping him well hidden so he won't get scooped away from OAR anytime soon." Yet, you told the OIG that you had suspicions over Beale from the moment you started at EPA.
 - a. Why did you believe he was such an exemplary employee?
 - b. Why didn't you take any meaningful action on your suspicions?
 - c. In light of your professed concerns over Beale from the moment you started at EPA, did you worry about the kind of example Beale set for other EPA employees?
13. What verification mechanisms exist to ensure that employees do not continue collecting paychecks after they stop working?
14. How many cases of suspected time and attendance fraud have you been made aware of during your tenure as Administrator? How many suspected instances have been referred to you from an external source, and how many were discovered by you and those you supervise?
15. How many cases of suspected time and attendance fraud had you been made aware of during your tenure as Assistant Administrator for the Office of Air and Radiation? How many suspected instances have been referred to you from an external source, and how many were discovered by you and those you supervise?
16. Beale spent hundreds of thousands of taxpayer dollars on excessive travel. Yet, EPA employees signed off on his erroneous travel vouchers because they thought he was "special."
 - a. How much money does EPA spend on travel?
 - b. Is there really a different standard for certain EPA employees' travel?
 - c. Who else is "special" at the EPA that can get away with this?
17. What is the process by which time and attendance problems are dealt with?
18. As an organization, would you characterize the EPA as having a culture that values attention to proper time and attendance keeping?
19. According to the Corrective Action Report of December 2013, EPA is migrating to a new payroll system in 2014. Please describe this new system. What features does it offer over the current system? Is the transition on schedule? How much did it cost?
20. According to the Corrective Action Report of December 2013, "Currently, the EPA is implementing a policy of "default pay" and "mass approval," where an employee will be paid for a full 80 hours over a pay period even if one step of the process fails to occur." Please explain the rationale behind this policy and how long has it been in effect.

21. According to the Corrective Action Report of December 2013, "the EPA also amended its time and attendance policy on June 20, 2013, and is currently engaged in negotiations with the agency's unions over the revised policy." Please detail the status of these negotiations.
22. According to the Corrective Action Report of December 2013, EPA said that it "expects to complete its review" of executive payroll approvals, employee departures and payroll, statutory pay limits, parking and transit subsidy, retention incentives, travel other than coach class travel, travel reimbursements above the government rate, and executive travel approval. According to this report, the reviews were supposed to be finished within 4 to 12 weeks. What is the status of each?
23. According to the Corrective Action Report of December 2013, no EPA employees were then receiving a retention incentive. Is this still the case? When was there a major reduction in the number of people receiving them? Are they still available?
24. According to the Corrective Action Report of December 2013, "regulations also provide agencies with the ability to request a waiver from OPM of these caps up to 50% of an employee's salary." Are you aware of instances where an EPA employee exceeded the cap by 50%? What is the largest waiver you have encountered?
25. How many EPA employees are currently receiving salaries that are above the statutory cap and require a waiver?
26. Please identify the position of every employee of the EPA who has exceeded the statutory pay cap during your tenure as Administrator, indicate by how much that employee exceeded the salary cap, and whether that employee received a proper waiver to do so.
27. Please identify the position of every employee of the Office of Air and Radiation who exceeded the statutory pay cap during your tenure as Assistant Administrator. Please also indicate by how much that employee exceeded the salary cap, and whether that employee received a proper waiver to do so.
28. How many EPA employees have received subsidized parking during your tenure as Administrator? Please provide as specific of an answer or estimate as possible.
29. How many Office of Air and Radiation employees received subsidized parking during your tenure as Assistant Administrator? Please provide as specific of an answer or estimate as possible.
30. On March 19 of this year, the Committee's minority staff published a 67-page report entitled *EPA's Playbook Unveiled: A Story of Fraud, Deceit, and Secret Science*, which documents how Beale coordinated abusive tactics in the rulemaking process behind the 1997 Ozone and Particulate Matter National Ambient Air Quality Standards and how the EPA adopted this system that he pioneered in numerous subsequent air quality regulations. In news reports, EPA representative Alisha Johnson downplayed Beale's role: "While Mr. Beale did work on the rules mentioned in the report, he was just one of a large number of people from a number of disciplines across the Agency who provided input on those rules."
 - a. Is it not true, though, that Beale's bonuses and promotions were based in large part on his "key role" on one of the "most significant issues he managed": the 1997 Ozone and Particulate Matter NAAQS?

- b. Is it not true that in a staff wide email sent on December 3, 2010, you praised Beale for his "leading role" in the 1997 NAAQS review?
 - c. In light of these incontrovertible facts, why is EPA now downplaying the role that even you claimed he had in setting the 1997 NAAQS?
- 31. In EPA's justification for its proposed FY 2015 budget, the Agency requests Congress extend its authority under Title 42 to hire individuals to science and research positions at salary levels above the general service employee pay limit.
 - a. Please list the employees who were hired under Title 42?
 - b. What is the salary range for current EPA employees hired under Title 42?
- 32. In EPA's justification for its proposed FY 2015 budget, the Agency requests Congress remove the ceiling under Title 42, which limits the hiring of 50 persons to science and research positions at salary levels above the general service employee pay limit.
 - a. How many persons would EPA hire under Title 42 if there was no ceiling?
 - b. What area of science and research does EPA need more employees under Title 42?

Topic: CASAC

- 33. From March 25-27, 2014, the Clean Air Scientific Advisory Committee (CASAC) ozone review panel met to review national ambient air quality standards for ozone. The composition of CASAC is not only critical to the impending ozone standards, but in the context of EPA's proposed FY 2015 budget, it is critical given the massive amount of federal research grants these panelists have received to produce work they are reviewing as CASAC panelist, essentially creating a scientific revolving door. Yet, the Agency has continued to deny public access to the underlying science at the same time it continues to issue more grants to the same researchers.
 - a. In light of these facts, are you aware that 75% (15 out of 20) of the CASAC ozone review panelists have received EPA research grants?
 - b. Are you aware that those 15 panelists have received over \$180.8 million in EPA research grants?
 - c. Is this a conflict of interest? If not, why not?
- 34. In our private discussions prior to your nomination you stated that "legitimate scientists" would be provided access to underlying data. How does the agency define a "legitimate scientist" and "legitimate scientific inquiry?"

Topic: White House Interference with Congress

- 35. On June 13, 2013, Kevin Minoli, Acting General Counsel, sent the White House an email asking for permission to release 106 emails to Chairman Issa and Ranking Member Vitter. These 106 emails were also subject to Ranking Member Vitter's negotiations over your confirmation as EPA Administrator. The EPA did not turn over these documents, and only did so AFTER Congress

subpoenaed the documents. Accordingly, it appears that the White House acted to obstruct a Congressional investigation. Since the discovery of this email, Chairman Issa has issued a subpoena for all documents in EPA's possession that relate to this obstruction.

- a. Ms. McCarthy, according to an email obtained by the Committee – it appears that EPA sought White House permission to release 106 documents to me and Chairman Issa last June. EPA did not release these documents until Issa issued a subpoena in September 2013. Did the White House ever instruct you or EPA official to withhold these documents from Congress?
- b. Is it common practice for EPA to seek the White House's permission to respond to a Congressional request, even when White House equities are not involved?
- c. Did EPA do so in this case?
- d. Why did EPA refuse to turn over the documents in question until a subpoena had been issued?
- e. Why has EPA not complied with the most recent subpoena for documents relating to White House interference with a Congressional Investigation?

Topic: New Source Performance Standards (NSPS)

36. When EPA evaluated whether the cost of electricity from a new power plant using CCS is reasonable, did EPA rely on the cost of the technology at its current status as an emerging technology for power plants or did EPA look at what the costs are projected to be when CCS reaches the status of a fully mature technology?
 - a. What are the differences in cost between CCS in its current status and when it reaches status as a fully mature technology?
 - b. Has the Department of Energy shared with EPA how long before CCS is considered a fully mature technology and cost competitive for power plants?
 - c. Mr. Julio Friedmann, Deputy Assistant Secretary at the Department of Energy is an expert in CCS technologies. He recently testified that early stage deployment of CCS for new power plants would increase the costs of wholesale electricity by approximately "70 to 80 percent." Does EPA dispute the validity of this statement?
37. In the proposed New Source Performance Standard rule for new electricity plants, EPA states that the standard it set for a new natural gas combined cycle power plant (1000 pounds of CO₂ per megawatt hour) is being met by over 90% of those types of plants in operation today. How many coal fired power plants in operation today can meet the proposed standard (1100 pounds of CO₂ per megawatt hour) for new coal power plants?
38. In previous EPA testimony, the Agency says the proposed standards for a new coal power plant "reflect the *demonstrated performance* of efficient, low carbon technologies that are currently being used today."
 - a. Are there any full scale coal power plants currently operating in the US that are using fully integrated CCS technology?

- b. Are there any electricity generating plants using CCS components in a FULLY INTEGRATED system (not gasification or EOR systems)?
- c. If not, how can EPA select a standard without knowing whether it is achievable in practice?

Topic: Social Cost of Carbon

- 39. How many EPA full-time equivalent (FTE) hours were dedicated to the Interagency Working Group that developed the 2013 social cost of carbon estimates?
- 40. How much (in dollar amount) of EPA's FY2014 appropriations were dedicated to the Interagency Working Group's 2013 social cost of carbon estimates, including the Office of Air and Radiation's Office of Atmospheric Program's "technical work and the modeling" for the estimates?
- 41. Do you believe it is appropriate for the EPA to enter into formal consultation with USFWS to assess impacts on threatened and endangered species from major regulations under the Clean Air Act? As you are aware, EPA consults with the USFWS under the 316(b) cooling water intake rule, so why not allow such consultation for greenhouse gas regulations that could have land use impacts with far greater consequence?
 - a. Do you disagree with the Director Ashe of US Fish and Wildlife Service, who said you are obligated to consult with USFWS?
 - b. What arguments have you given to Director Ashe as to why you are not obligated to do so?

Topic: EPA's TSCA Budget

- 42. The President's FY2015 Budget justification indicates that the Agency will realign \$23 million to focus on several priorities, including implementation of the President's Executive Order on Chemical Safety (E.O. 13650). In a reference to the realignment of funds to address air toxics work, EPA stated the following:

In the agency's chemical safety program, realignments will be used to develop and release 19 draft chemical risk assessments and complete 10 final chemical risk assessments. These actions are critical in achieving the agency's long-term chemical safety goals.

Are the chemical risk assessments referred to in the Budget proposal the same assessments yet to be completed under the Work Plan Chemical program?

- 43. I believe EPA has completed five draft chemical assessments under the Work Plan Chemical program to date.
 - a. When will the first five assessments be made final?

- b. Do you agree that the Work Plan assessments are a possible model for the Agency's work under a reformed Toxic Substances Control Act?
 - c. The Agency reviewed some 1,200 chemicals in prioritizing 83 substances for the Work Plan Chemicals program. Is it your opinion that the Agency has the expertise and capability to prioritize substances in commerce, for further review and assessment, relatively quickly and efficiently?
 - d. The Work Plan Chemicals assessments are intended to identify where additional regulation might be necessary with respect to a particular substance. In the first five draft Work Plan chemical assessments, have any additional regulatory needs been identified?
 - e. How does the Agency intend to address those identified needs – what regulatory measures will the Agency take on those substances?
44. The FY2015 Budget proposal includes funding for implementing EPA's various chemical and pesticide safety programs under a broad category called "Ensuring the Safety of Chemicals and Preventing Pollution Prevention." The Agency proposes an increase of \$42.5 million for that category for FY2015, with \$40.5 million of that increase targeted at chemical safety programs. I'd like to have a better understanding of what that \$40 million increase will be used for.
- a. Under the FY14 budget, the Agency's TSCA program was budgeted at \$62.7 million, split between \$48 million for existing chemicals management and \$14 million for new chemicals. So the FY15 budget suggests no increase for management of the Toxic Substances Control Act over FY2014. Is that correct?
 - b. Since the \$40 million increase is not going to TSCA implementation, what will the funding increase support?
 - c. The FY14 Budget justification indicated that implementation of all of the Agency's existing TSCA authorities were a priority objective. Do you agree that TSCA implementation continues to be a priority for EPA?
 - d. Can you outline for me what the Agency accomplished in FY14 in fully implementing its existing TSCA authority?
45. The FY15 Budget justification indicates that there are more than 22,000 CBI claims in health and safety studies as of 2010. Since that time, the Agency has been working to address those claims in the CBI Challenge Program, in which you challenged companies to review and address their claims.
- a. Does EPA still contend there were 22,000 CBI claims in health and safety studies now?
 - b. Since the Challenge program was begun, some 16,291 cases were reviewed. Is that correct?
 - c. Of those 16,291 cases, 12,043 had no CBI at all. Is that correct?
 - d. Would you agree that EPA wrongly classified some CBI claims when in fact there were not CBI claims made? In other words, didn't the 22,000 figure erroneously cite the number of CBI claims made with respect to health and safety studies?

- e. What was the cause of this significant error?
- f. Would you agree that the perception that industry made excessive CBI claims is in error, and not borne out by the facts?
- g. I understand that of the roughly 10,000 cases that in fact had CBI claims, some 3,349 were allowed, 909 have been declassified, and about 7,200 remain to be reviewed. Is that correct?
- h. Would you consider the CBI Challenge program a success? What is the Agency doing to make clear that there was a significant error in the number of reported CBI claims, and to more closely track the actual number of claims made?

Topic: Hydraulic Fracturing

- 46. I am very concerned that the hydraulic fracturing study that EPA has been working on for over four years has gone beyond Congressional intent and has inappropriately expanded in scope. The request to EPA in the FY 2010 appropriations report was for EPA to study any link between hydraulic fracturing and drinking water. Yet four years later, despite serious concerns about how EPA is conducting this study, I understand the agency is now embarking on several new research areas and may have 30 or more separate reports steaming from this study. The agency seems to be studying every water issue related to oil and gas development.
 - a. What justification does the Agency have for going well beyond the Congressionally mandated scope?
 - b. What is the current timeline to issue the study?
 - c. What are current total EPA costs to date of this study?
 - d. What do you expect to be the total costs of the study once it is completed?
 - e. What is the status of EPA's prospective case studies?
- 47. I am also concerned that this study will be released publicly before there is a peer review by the Science Advisory Board. It is my understanding that EPA plans to release the study to the public at the same time it is submitted for peer review, which is unacceptable and similar to the Agency's actions in their less than credible Pavillion, Wyoming investigation.
 - a. Isn't this poor process setting the Agency up again for a situation in which EPA may have to back track on findings after the initial draft is peer reviewed?
 - b. This type of timeline has been used successfully by the EPA to scare and mislead the public with draft findings which are later debunked or never peer reviewed at all. Isn't this sort of timetable and procedure contrary to the goals of releasing a credible study or one that meets HISA requirements?
 - c. Given the struggles of EPA's previous investigations into hydraulic fracturing and the Agencies severely damaged credibility in this arena, how are you planning on ensuring the scientific validity of this current study?

- d. How is EPA planning on ensuring that any and all information disseminated to the public as a possible conclusion is properly vetted and peer reviewed if it is releasing conclusions prior to review by the SAB?
48. The Agency has indicated that they will not do a risk assessment to put all this information into some actual context.
- a. Why does EPA refuse to conduct a risk assessment as part of the study?
 - b. Does the Agency plan on putting any of the study's findings or conclusions into context? If so how?
49. You've said that hydraulic fracturing can be done safely and have agreed with former EPA Administrator Lisa Jackson that there have been no confirmed cases of hydraulic fracturing impacting drinking water. What is your vision for getting the American public to understand that hydraulic fracturing is safe and that fracking has unlocked an American energy revolution that has lowered all Americans' energy prices, created jobs, helping lower GHG emissions and revitalizing such industries as the manufacturing, steel and chemical sectors?
50. The DOE and USGS have known experience conducting drilling and water sampling studies in the field. Specifically, DOE's NETL is doing a study in PA's Greene and Washington counties to assess the environmental effects of shale gas production and a July 2013 press release issued by NETL stated that "while nothing of concern has been found thus far, the results are far too preliminary to make any firm claims. We expect a final report on the results by the end of the calendar year."
- a. Are you aware of this study?
 - b. Are you asking that DOE share this type of work and can you use this study in the larger EPA water study?
 - c. Specifically, would the EPA benefit from the DOE's and USGS's expertise in these issues as part of the EPA's larger water study which continues to drag along and clearly demonstrates that the EPA's taken on more than it can chew?
51. Last June, ORD announced it would abandon its flawed drinking water investigation in Pavillion, WY and would instead support a further investigation by the State of Wyoming
- a. Given the flawed science on display by the agency at Pavillion and ORD's withdrawal, will you exclude the agency's work and data prior to June 2013 from the agency's Congressionally-requested study on the relationship between hydraulic fracturing and drinking water? If not, why not?
 - b. ORD abandoned its investigation, yet according to agency statements, continues to "stand[] behind its work and data." How can the agency reconcile these directly contradictory actions? How would you explain to the American people that continuing a flawed investigation is not worth taxpayer resources, yet the agency "stands behind" the work and data that it abandoned?

52. In February the EPA's IG sent a memo to the EPA Office of Water outlining an initiative the IG has underway that will "determine and evaluate what regulatory authority is available to the EPA and states, identify potential threats to water resources from hydraulic fracturing, and evaluate the EPA's and states' responses to them." Do you consider this a duplication of the EPA's efforts as it relates to the multi-year and multi-million dollar hydraulic fracturing and water study currently in process at the EPA and if not, then how do these studies differ? Hasn't EPA independently done this type of evaluation?

Topic: Water Connectivity Study:

53. EPA recently released a notice of proposed rulemaking that would constitute the greatest expansion of federal control over land and water resources in the 42-year history of the Clean Water Act (CWA). The "Kennedy test" in the *Rapanos* Supreme Court decision calls for the finding of a "significant nexus" between waters for the assertion of federal jurisdiction. The EPA Office of Water asked the Office of Research and Development to conduct a Connectivity Study to help inform the Agency's regulatory policy decisions. If EPA intended for the science to inform policy decisions, the regulatory process should not have been initiated until the Connectivity Study was completed, along with a robust peer review of the study. That did not happen. In addition, the Connectivity Study is fundamentally flawed since there was no definitional finding of what constitutes a "significant" connection.
- a. Do you believe it is important that the "waters of the United States" regulation be based on sound science? If so, how can you justify moving forward with the expansion of the scope of "waters of the United States" before the Connectivity Study is completed and has undergone peer review?

Topic: Economic Impacts:

54. In performing the cost-benefit analysis required for development of the proposed regulation, why did you choose to use the permitting numbers from 2010 as your baseline? As you know, due to the economic recession occurring at the time, there were scarcely any construction activities initiated during that year and the numbers were deflated. In addition, why did EPA only examine the cost impacts under Section 404 and not for other CWA programs?
55. The economic analysis completed by the agency predicts that only 2.7% more waters will be made federally jurisdictional by the proposed "waters of the United States" rule. As you know, the analysis – including the 2.7% figure – has been severely criticized by credible economists and is likely to be underestimating the potential impact of the rule. Given the outstanding concerns with the analysis, can you explain why the agency did not wait to go forward with a proposed rule until the agency had addressed these concerns and produced a credible economic analysis to inform the public?
56. David Sunding, Ph.D., recently reviewed EPA's economic analysis associated with the proposed "waters of the United States" rule and concluded that the errors and omissions in EPA's study are incredibly severe and may render it essentially meaningless. To address these issues Dr. Sunding recommended that the agency withdraw the economic analysis and prepare an adequate study for this major change in the implementation of the CWA. Would you be willing to withdraw this flawed economic analysis and develop a new analysis addressing these concerns?
57. I understand that when assessing the potential economic costs and benefits of EPA's proposed "waters of the United States" rule the agency omitted analysis of certain key programs that will

undoubtedly be impacted by the rule. The agency provides no analysis for costs related to: the development of state water quality standards, monitoring and assessment of water quality, total maximum daily load development, and the entire industrial wastewater NPDES permitting program. In addition, EPA based its abbreviated assessment of impacts on the 311 spill program on "anecdotal" evidence. Can you explain why the EPA omitted or provided very little analysis of these key programs?

58. The EPA certified that this proposed rule will "not have a significant impact" on small businesses and communities. However, the agency did not gather significant feedback from those impacted prior to the rule being proposed. According to the U.S. Chamber of Commerce, it takes up to 12 months and costs hundreds of thousands of dollars to obtain a wetlands permit. Are you able to assure this committee that the costs and timelines associated with permit reviews will not be extended by this change in jurisdictional definition?
59. The cost benefit analysis supporting the "waters of the United States" proposal contains numerous deficiencies. According to the National Stone, Sand and Gravel Association the increased mitigation costs for just one site can be \$100,000 or more under the new rule. With over 10,000 of these facilities in the US and dozens of industries affected, the costs of this rule have been drastically underestimated. While these deficiencies have been pointed out to EPA and the Corps, the very low estimates are still repeated by EPA and Corps officials. Does the EPA have plans to revise the cost benefit study to address these legitimate concerns?
60. As you know, there are several new definitions and concepts contained in the proposed "waters of the United States" rule. As a result, there is a distinct possibility that agencies will have to spend more money determining how to actually implement this rule. There is also a strong likelihood that other agencies' programs will be impacted given the broad scope of this proposed rule.
- a. Has EPA consulted with other federal agencies that have administrative responsibilities under the Clean Water Act?
 - b. Has EPA considered the costs that the EPA and the Corps will incur, without considering other actors, in determining how this rule will be implemented?
 - c. Does EPA know how other agencies will interpret this rule, and whether other agencies will require additional resources in order to understand how their ability to administer their own programs might be affected?

Topic: Clean Water Act Permitting:

61. In light of EPA's recent actions concerning Pebble Mine and Spruce Mine, the regulated community is understandably concerned about the lack of certainty currently surrounding the Section 404 permitting process. How does EPA intend to address these concerns and ensure that the regulated community can have their projects fairly considered, and can rely on their permits once they are issued? Would you agree that finality is an important consideration for permits?
62. According to EPA, the agency initiated the Bristol Bay Watershed Assessment in response to a petition for EPA to exercise its CWA Section 404(c) authority. Has the agency received any other similar petitions, and if so what has been requested? Has the agency received any petitions concerning the agency's use of Section 404(c) on any existing permits?

63. Does EPA have any plans to potentially perform studies on or initiate the 404(c) process on any other waters at this time? If so, where?
64. Does EPA have any plans to potentially reevaluate any existing 404 permits pursuant to its claimed 404(c) authority? If so, which ones?
65. Has the EPA evaluated the consequence of its actions with respect to Bristol Bay and Spruce Mine and the impact the uncertainty will have on investment in natural resource development?
66. Could regulatory uncertainty over Section 404 permits drive away investment at the cost of American jobs? Has the EPA studied this issue?
67. Many states have primacy over their Surface Mining Control and Reclamation Act (SMCRA) permitting programs, and as such many states expend a great deal of time and resources in the mine permitting process. What effect would a lack of finality in CWA Section 404 permits have on state SMCRA permitting scheme?
68. The President, in executive orders and public statements, has said that streamlining the permitting process for energy projects – particularly those necessary to support renewable energy projects – is a high priority for his Administration. As you know, individual permits by definition take longer to get approved. Due to the proposed rulemaking, it's likely that more individual federal permits will be required, especially for energy projects. Where a federal permit is required, other federal requirements are also imposed (NEPA, potential ESA consultations, historic preservation review, tribal consultations, and citizen suit enforcement), thus lengthening the processing time. Can you explain how this outcome is consistent with the President's streamlining objective?
69. While the Administration has committed to streamlining and expediting permitting for major infrastructure projects that advance energy (e.g., Executive order 13604, Blueprint for a Secure Energy Future), there is some concern that this proposed rulemaking will have the opposite effect. This is because EPA's proposed rule creates new sub-categories of water that could be subject to federal jurisdiction, preempts states' rights to regulate internal waters traditionally regulated only by the states, and creates a cumbersome review process for determining which waters are jurisdictional under the new definition of "waters of the United States."
 - a. Can EPA guarantee that this rule will not further delay permitting for energy infrastructure projects?
 - b. Has EPA and the Army Corps considered the Administration's goals for energy development and infrastructure expansion in formulating this rule? If so, is that consideration discussed in the rule or elsewhere? Have the agencies requested comments on how this rule might impede the development of energy projects?
 - c. In the cost benefits analysis for this rule, do the agencies consider any of the potential negative impacts that this rule could have on energy sector development such as: new delays in permitting projects, more cumbersome consultations between state and federal agencies, and more permits needed for the same projects?

Topic: Fill Material:

70. The current definition of fill material, finalized in May 2002, solidified decades of regulatory practice by unifying the Corps and EPA's prior conflicting definitions so as to be consistent with

each other and the structure of the CWA. However, both EPA and the Corps have stated that they are considering revising the definition of fill material. These changes could mean that certain mining-related activities would be deemed illegal, thereby preventing mining companies from operating. The FY 2014 Omnibus appropriations bill included language to prevent the Corps from working on any regulation that would change the definition of fill material.

- a. Has EPA engaged in discussions with the Corps on revising the rule?
- b. What is EPA's rationale for potentially revisiting the well-established division of the Sections 402 and 404 programs?
- c. What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?

Topic: Chemicals:

71. In the EPA's proposed FY 2015 budget, the agency is requesting "\$23 million in FY 2015 to support activities under the President's executive order on chemical safety, as well as Agency efforts on chemical prioritization, air toxics, radon, and volatile organic compounds in drinking water.
 - a. Can you provide more specific information on the projects this funding will go towards?
 - b. Do you agree that we need to improve the Local Emergency Planning Commission (LEPCs) program and Emergency Planning & Community Right-To-Know Act (EPCRA) reporting system?
 - c. Will this funding go towards the development of new technology such as a mobile app version of the CAMEO system and the development of a web-based version of EPCRA Tier II submission to facilitate a more accurate and complete hazardous materials reporting system? Such improvements will allow local first responders to prioritize the hazards they may face at the facility.
72. In the case of the West, Texas fertilizer facility tragedy that occurred on April 17, 2013, it appears that the facility was not compliant with a number of existing regulations and industry standards. Do you agree that had existing regulatory requirements and industry standards been fully implemented by West Fertilizer this tragic accident would not have happened?
73. Do you agree that we need to improve the Local Emergency Planning Commission (LEPCs) program and Emergency Planning & Community Right-To-Know Act (EPCRA) reporting system?
 - a. What would EPA recommend to improve and enhance education / training / emergency response efforts between chemical facilities and their local LEPC and first responders?
 - b. Do you agree that the main issue related to the West Fertilizer tragedy was a storage issue, not an air release issue?
74. The EPA Risk Management Program (RMP) was authorized by Congress in the "Clean Air Act Amendments of 1990" following the Bhopal, India accident in 1984. In previous EPA testimony before Congress, the agency stated that the "goal of the EPA's Risk Management Program is to prevent accidental releases of substances to the air that can cause serious harm to the public and

the environment from short-term exposures, and to mitigate the severity of releases that do occur.”

- a. Is this still the goal of the agency?
 - b. How does EPA define short-term exposure?
 - c. Is this consistent with past EPA interpretations?
 - d. Do you agree there are statutory factors the agency needs to consider when adding any hazardous substances to the RMP list? If yes, could you list the factors EPA is required to consider?
 - e. Would you agree that a product such as solid fertilizer grade ammonium nitrate was never intended to be part of the EPA RMP program as the focus of the program is to address accidental toxic releases into the air from a hazardous gas or liquid?
75. The U.S. chemical industry is one of the most regulated industries in the world and data shows that the industry is one of the safest. This is due to an existing set of safety and security laws, regulations and voluntary programs. Do you agree that EPA should focus its time and resources on increasing training, outreach and education efforts to the regulated community in order to help with compliance assistance and focus enforcement on companies with a history of noncompliance?

Senator Roger F. Wicker

1. I was disappointed to see that you are proposing eliminating funding for beach monitoring grants under the BEACH Act. These programs are vital to over 35 coastal communities, including my home state of Mississippi. These funds help support water quality and public notification systems.

What is the EPA's rationale for eliminating funding for the beach monitoring grant program in the 2015 budget request?

Furthermore, I would like to know more about the Clean Water Act and Clean Air Act.

2. What percentage of local communities are currently in compliance with EPA requirements under the Clean Water Act and the Clean Air Act respectively?
3. How many Voluntary Consent Agreements, or other similar judicial device, has the EPA entered into regarding the Clean Water Act and the Clean Air Act?
4. What has been the financial impact of those agreements on local communities?

Following up with questions from the hearing regarding EPA's Clean Air section 105 air quality management categorical grant program, I would like to ask the following questions.

5. What is the allocation formula for the State Air Grants based on?
6. When the allocation formula was first implemented, what was the distribution of funds to EPA regions?
7. What are the projected changes in the distribution of funds for EPA regions after the new allocation formula is implemented?

Senator Deb Fischer

1. The EPA has issued a number of new regulations regarding emissions from electric generating units. What is the EPA's ultimate goal? Is the EPA trying to force utilities to take coal-fired power plants out of operation?
2. Is it fair to say that EPA would like to see the U.S. lessen its dependence on coal for electricity production?
3. The EPA will soon be announcing new proposed regulations regarding greenhouse gas emissions from existing power plants. Do commercially available technologies currently exist to capture and store carbon emissions at power plants?
 - a. If yes, where? At what cost? Will vendors be able to deal with the demand created by the regulations?
4. The power sector has announced the retirement of over 60 giga-watts of coal fired generation. This amounts to about 20 percent of the existing coal-fired generating capacity in the United States. These retirements will generally occur before 2020, with a great majority of the retirements occurring by the 2016 Mercury and Air Toxics Standards ("MATS") deadline. This loss of coal fired capacity is likely to continue due to a new EPA rules, including the new CO2 regulations for existing power plants, regulation of coal ash, and regional/local control measures required to attain the more stringent ozone and fine PM2.5 standards. Furthermore, electric reliability problems posed by the continued loss of coal fired capacity could be exacerbated by the retirement of baseload nuclear generation. According to a recent white paper by Senator Murkowski: "Just last year four nuclear reactors were closed, and a fifth unit is scheduled to close in 2014. Two of these facilities ... cited economic reasons as the basis for their closures even though the facilities received license renewals."¹ The power sector faces major challenges as to how it will replace a large amount of coal and nuclear baseload capacity. Please explain on how the Agency intends to address this issue with regards to the upcoming section 111(d) rule, including the steps it plans to take to ensure the reliability of the grid.
5. Given that efficiency improvements will be critical for lowering CO2 emissions from power plant under any future section 111(d) rule, what the agency is doing to remove the existing regulatory barriers to completing such efficiency improvement measures under the New Source Review program?
6. In the proposed rule, EPA makes its "adequately demonstrated" determination predominantly based on CCS demonstration projects that have received federal assistance under the Energy Policy Act of 2005 (EPA05). Notably, three of the four commercial scale CCS demonstration relied on by EPA have all been allocated an investment tax credit that was established for "clean coal facilities" under section 1307 of EPA05. However, Congress has placed specific limitations on EPA's authority to set section 111 standards based on demonstration projects that receive federal assistance under these EPA05 programs. Specifically, these statutory limitations expressly bar EPA from considering the three commercial-scale CCS demonstration projects in making a determination under section 111 that CCS is adequately demonstrated. Please explain why the Agency is ignoring this statutory limitation in the pending NSPS rulemaking.

¹ See Murkowski White Paper at page 9, footnote 41.

7. EPA's proposed rule defining the term "waters of the United States" should allow stakeholders sufficient time to submit a robust and meaningful response to the proposal. Stakeholders need adequate time to develop analytical, technical, and economic information in response to the proposal. I understand that EPA and the Corps have taken years to develop a proposed rule. Will you commit to providing the public no less than 180 days for public comment?
8. In the proposal of the rule redefining "waters of the United States," ditches are now considered to be part of the definition of a "tributary," which make them now come under federal jurisdiction, no "significant nexus" analysis even needed. How many ditches are now going to be a "water of the U.S." under this rule? We have a lot of ditches in my part of the country and if EPA is in the game of regulating them, farmers and ranchers are going to be pretty upset. The agriculture exemptions are not enough, farmers and ranchers are still going to have to get NPDES permits and 404 permits for things like spraying fields and pastures near ditches and ponds.
9. How many more farms will need an SPCC plan based on the proposed rule? Will more livestock operations need 402 NPDES permits under this rule? Will more landowners need 404 permits?
10. EPA proposed a rule to redefine a "water of the U.S." Is it true that, in looking at costs, EPA did not update 20 year-old studies for inflation? Did EPA analyze each program under the Clean Water Act and whether that program would be expanded with this change and by how much?
11. How long and how much money does it currently take on average to get a nationwide permit? Is it safe to say that increasing the number of waters under federal regulation, especially if you're including ditches, dry streams, and isolated ponds and puddles, will increase the average time it takes to get a permit and will increase the average cost to get a permit?
12. Can a third party sue me under the Clean Water Act if you have told me my dry streambed is not a "water of the U.S." in the form of a "jurisdictional determination" (JD) but that individual wants it to be?
13. What is the EPA's definition for "significant nexus"?
14. How do the states feel about you taking federal control over "all waters?" Have you left any waters under their control? Have you consulted them?
15. This proposal greatly expands the current definition of "waters of the U.S." under the Clean Water Act, opening them up to permitting requirements for ponds, ditches, and even dry streambeds that only hold water when there is a rainfall event. How do you explain to the agriculture community what the agency is doing?
16. Does this rule increase the number of "waters" that could come under federal jurisdiction? Industry, unanimously believes the answer is yes. Doesn't it logically follow that if more waters are jurisdictional more permits will be required?
17. Administrator, you said the proposal will provide clarity. However, it is 371 pages long. If a landowner wants to know whether waters on his property will require a federal permit do you think he will be "clear" about that after he reads a 300+ page document? Is it your purpose to write a regulation so broad and vague that EPA is saying that "every water is now under federal jurisdiction?" I do not believe this is the kind of clarity landowners is asking for, or the Commerce Clause of the Constitution and the Clean Water Act allows.

18. Last November, the EPA proposed Renewable Fuel Standard targets for 2014 that would blend less fuel than we blended last year, impacting the economy in Nebraska. It does so using an approach that I find to be inconsistent with the law and previous regulations by inserting considerations about fuel delivery infrastructure into the annual target setting process. What steps is EPA taking to fix this proposed rule and respond to the hundreds of thousands of comments submitted for your consideration? When do you expect the final rule to be released?
19. EPA announced plans to change the pathway approval process for new biofuels – a definite step in the right direction to mitigate unnecessarily long delays and wait times for new biofuels producers. Unfortunately, whatever positive benefits might come out of this process have been negated by the Agency's simultaneous announcement that new applicants refrain from submitting applications for a 6-month period, until EPA's new guidance is released. Coupled with the EPA's 2014 proposed volume rule under the RFS, and an already slow pathway approval process, this action only further creates unneeded uncertainty.
20. Is it realistic to think that the EPA can get new guidance out in a 6 month period? Will this new process be subject to OMB review?
21. Why did the EPA include a pause on new applications during this window of time? Have you assessed the impact of this approach on investors and on the innovation pipeline for new biofuels?
22. Your announcement states that you will be setting priorities for processing while you are working on revisions to your approval process. Please provide the Committee with the list of applications that you will be processing and those that you will not during this period of time.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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Majority (202) 225-2927
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April 30, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

Thank you for appearing before the Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy on Wednesday, April 2, 2014, to testify at the hearing entitled "The Fiscal Year 2015 EPA Budget."

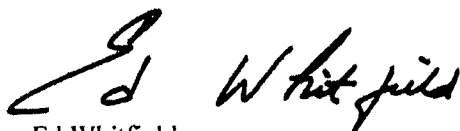
Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

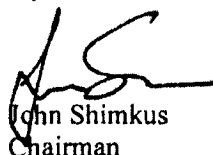
To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Wednesday, May 14, 2014. Your responses should be mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to Nick.Abraham@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittees.

Sincerely,



Ed Whitfield
Chairman
Subcommittee on Energy and Power



John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy and Power
The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachments

Attachment 1—Additional Questions for the Record

The Honorable Ed Whitfield

1. EPA's budget calls for a total of over \$234 million to "Address Climate Change." How much of this relates to the President's climate action plan?
2. With respect to EPA's proposed greenhouse gas (GHG) rule entitled "Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units" announced September 20, 2013, we wrote you on November 15, 2013 concerning the statutory provisions of the Energy Policy Act of 2005 ("EPACT 2005"), including provisions codified at 42 U.S.C. §15962(i) and 26 U.S.C. §48A.
 - a. Why has EPA still not provided a written response to that letter?
 - b. Prior to receipt of that letter, were you aware of those EPACT 2005 provisions? Please provide a yes or no response.
 - c. Prior to receipt of that letter, who, if anyone, to your knowledge at EPA was aware of those EPACT 2005 provisions?
 - d. Please provide a detailed explanation of why EPA did not address those EPACT 2005 provisions in the proposed rule you signed in September.
3. On February 5, 2014, EPA posted a "Notice of Data Availability" (NODA) in support of the proposed GHG rule for new power plants referenced above. While EPA posted the NODA on its website on February 5, 2014 and solicited extensive comment, EPA failed to issue a press release or other regulatory announcement notifying the public of the posting of the NODA or the fact that the agency was soliciting comments on the EPAct 2005 provisions. Why did EPA fail to issue a press release or make a public regulatory announcement on February 5, 2014 or shortly thereafter?
4. With respect to EPA's proposed GHG rule for new electric generating units referenced above, EPA proposes to require that any new coal-fired power plants install carbon capture and storage (CCS) technologies that EPA maintains have been adequately demonstrated for use at full-scale commercial power plants.
 - a. During the interagency review process did Department of Energy (DOE) officials or staff provide any written comments on EPA's proposed rule? Please provide a yes or no response.
 - b. During the interagency review process did DOE officials or staff provide written comments on EPA's proposed CCS requirement for new coal-fired power plants? Please provide a yes or no response.
 - c. Are all DOE comments during the interagency review process regarding the proposed rule included in the administrative record for the proposed rule?
5. With respect to the GHG regulations EPA plans to propose for modified and reconstructed electric generating units by June 1, 2014:

- a. Will the agency propose standards that can be achieved at modified and reconstructed coal-fired units using technologies that are currently in commercial service at operating electric generating units?
 - b. What emissions levels does the agency believe are achievable by modified and reconstructed coal-fired electric generating units?
 - c. What technologies currently in commercial service does the agency believe could be used at modified and reconstructed coal-fired units to achieve those reductions?
6. With respect to the GHG regulations EPA plans to propose for existing electric generating units by June 1, 2014:
 - a. Does EPA plan to impose statewide numerical GHG emissions reduction requirements?
 - b. Does EPA plan to propose emissions levels for existing coal-fired units that can be achieved using technologies and control equipment that are currently in commercial service at operating electric generating units?
 - c. What emissions levels does the agency believe are achievable by existing coal-fired electric generating units?
 - d. What existing technologies and control equipment in commercial service does the agency believe could be used at existing coal-fired units to achieve those reductions?
7. EPA has advised the Committee that it is working on GHG standards for aircraft. What is EPA's current schedule for issuing such standards?
8. EPA has advised the Committee that it is working on additional GHG standards for trucks. What is EPA's current schedule for issuing such standards?
9. For each of the following source categories, please indicate whether the agency is currently conducting work relating to potential GHG regulations for those sources, and if the agency is conducting work, the agency's current timetable for performing analyses and making determinations:
 - a. Petroleum refineries
 - b. Pulp and paper facilities
 - c. Municipal landfills
 - d. Iron and steel production
 - e. Animal feeding operations
 - f. Portland cement manufacturing
10. On May 15, 2013, EPA provided a list of GHG Prevention of Significant Deterioration (PSD) permits issued by EPA or States that included 87 permits. Please identify all additional GHG PSD permits that have been issued by EPA or States since that list was prepared.
11. Looking across the range of EPA regulations that affect electric power generation, there are sizable cumulative impacts of Clean Air Act rules, Clean Water Act rules, and other rulemakings that risk substantial retirements of electric generating capacity. Has EPA prepared any analyses to identify the worst case scenarios for electricity generation and reliability that could result from the cumulative impact of its rules?

- a. If yes, will EPA make those risk assessments available to the Committee?
 - b. If no, why hasn't EPA performed such risk assessments?
12. The Energy Information Administration (EIA) issued an update on February 14, 2014 regarding its Annual Energy Outlook 2014 projections and indicated there will be more coal-fired power plant retirements by 2016 than have been scheduled. EIA stated:
- “Coal-fired power plants are subject to the Mercury and Air Toxics Standards (MATS), which require significant reductions in emissions of mercury, acid gases, and toxic metals. The standards are scheduled to take effect in April 2015, a deadline that is conditionally allowed to be extended by up to one year by state environmental permitting agencies. Projected retirements of coal-fired generating capacity in the AEO2014 include retirements above and beyond those reported to EIA as planned by power plant owners and operators. In these projections, 90% of the coal-fired capacity retirements occur by 2016, coinciding with the first year of enforcement for the Mercury and Air Toxics Standards.”
- a. Is EPA tracking all of the coal-fired electric generating units that will be retiring by 2016, coinciding with the first year of enforcement for the MATS rule? If yes, how many coal-fired electric generating units in the United States are expected to retire by 2016?
 - b. Have any coal-fired electric generating units been granted additional time to comply with the MATS rule beyond 2016? If yes, which units have been granted additional time?
13. On March 10th, the *New York Times* published an article entitled: “Coal to the Rescue, but Maybe Not Next Winter” raising concern that there could be significant price increases for electricity because “[s]cores of old coal-fired power plants in the Midwest will close in the next year.”
- a. Is EPA evaluating the cost and reliability concerns that have been raised regarding the pending shutdowns of coal-fired power plants in the Midwest, or other regions of the United States, that have announced they will close in the next one to two years?
 - b. What is EPA's current assessment of these concerns?
 - c. Is EPA taking any steps to postpone the retirement of any of these plants to ensure there will be no risks to electric reliability in the next few years?
 - d. Is EPA taking any steps to postpone the retirement of any of these plants to ensure there will not be significant electricity price increases over the next few years?
14. On April 6, 2014, the *Chicago Tribune* published an article entitled: “NRG Chief: Utilities need to 'play it straight'” in which the chief executive of NRG stated that: “The story that has not really been reported is how close the system came to collapsing in January.”
- a. Does EPA agree there were serious reliability concerns in January?
 - b. Since January, has EPA been consulting with DOE, Federal Energy Regulatory Commission and other federal agencies regarding the electric reliability concerns associated with the pending closure of many coal-fired units over the next 1 to 2 years, coinciding with the MATS rule?

- i. If yes, which agencies and which EPA officials are consulting with those agencies? In your response, please identify when such consultations have occurred and which EPA officials have engaged in the consultations.
 - ii. If no, will EPA be consulting with those federal agencies? In your response, if consultations are planned please identify when such consultations will occur and which EPA officials will engage in those consultations.
- 15. In addition to an unprecedented number of shutdowns of coal-fired electric generating units by 2016, coinciding with the compliance date for the MATS rule, on January 24, 2014, the CEOs of five nuclear companies wrote to EPA to express concern about the agency's "Cooling Towers" or "316(b)" rule. They raised concerns that the rule "could trigger the premature retirement of a significant portion of the nuclear fleet."
 - a. Do you have any concerns about the potential "premature retirement of a significant portion of the nuclear fleet" due to EPA rules?
 - b. Is preserving the existing nuclear fleet important to the Administration?
 - c. What steps, if any, is EPA taking to address the concerns expressed by these nuclear companies and can you provide any assurances that EPA's cooling towers rule will not cause or contribute to the premature retirement of a significant portion of the nuclear fleet?
- 16. According to a Feb. 5, 2014 *Greenwire* article, DOE is reportedly analyzing a scenario in which **one third** of U.S. nuclear power plants retire and the impact that would have on the president's Climate Action Plan. Is EPA also analyzing this scenario?
 - a. Is EPA concerned about the impacts on electric reliability from the premature retirement of nuclear power plants?
 - b. What is EPA doing to ensure its actions do not cause or contribute to the premature retirement of nuclear power plants?
- 17. EPA issues National Ambient Air Quality Standards (NAAQS), but years can pass before it provides guidance about how to implement the new standards, including permitting, to States and stakeholders. Going forward, will EPA commit to providing States and stakeholders with this essential information at the time EPA issues a final NAAQS?
- 18. While NAAQS State Implementation Plans and attainment can take years, a new NAAQS is effective immediately for new air permits. Any delay in EPA's implementation guidance and updating air quality models makes it more difficult for businesses to expand and create jobs. Will EPA issue clear guidance to regions and States encouraging the use of near-term alternatives in any situation where the issuance of new implementation updates is delayed?
- 19. Many of our nation's energy infrastructure projects rely on nationwide permits under the Clean Water Act when building new infrastructure or upgrading and maintaining existing infrastructure. On March 25, 2014, EPA and the U.S. Army Corps of Engineers jointly released a proposed rule addressing waters of the United States.

- a. Has EPA analyzed the potential impact of the proposed rule on building new energy infrastructure or upgrading and maintaining existing infrastructure? If yes, where in the rulemaking documents is that analysis?
 - b. What does EPA consider the impacts of the proposed rule to be on building new energy infrastructure or upgrading and maintaining existing infrastructure?
 - i. Will there be an increase in the need for individual permits?
 - ii. Will there be increases in processing time, cost and manpower to administer and process this increase in individual permits?
 - iii. If these costs were not considered in the proposed rule, why not?
 - c. To the extent that EPA has said in briefings that the agency expects that industry will be able to continue to rely on existing nationwide permits, please explain how the agency arrives at that conclusion and where the analysis is to support that conclusion in the agency's rulemaking documents.
20. The President in executive orders and public statements has said streamlining the permitting process for energy projects – particularly those necessary to support renewable energy projects – is a high priority for this Administration. Individual permits by definition take longer to reach a final decision.
- a. If more individual permits will be necessary for energy projects, can you explain how an increase in the need for individual permits in this proposal is consistent with the President's energy permit streamlining objective?
 - b. In addition, can you point to where in the preamble, regulatory text or economic analysis there is any discussion of direct and indirect impacts on energy infrastructure: for example, the time, manpower and administrative oversight necessary to conduct the increased burden of carrying out such federal requirements as NEPA reviews, potential ESA consultations, historic preservation review, tribal consultations, and responses to citizen suit enforcement?
21. With respect to EPA's proposed "Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, and New Residential Masonry Heaters," published Feb. 3, 2014 in the Federal Register:
- a. The proposed rule contemplates complex regulations on some classes of products that have never before been subject to regulation. As a practical matter, this means that EPA may not have the extent of knowledge or expertise, nor has the agency collected as extensive an amount of data, as with other categories that have been subject to regulation. Further, there are an estimated 97 instances in the proposal where EPA specifically asks for comments on various provisions. Given what is expected to be an expedited review process, and our understanding that EPA has indicated that EPA has no plans to enlist contractor support for comment review, how is it possible for the agency to adequately respond to the large volume of comments it is likely to receive on the proposal?
 - b. Given the number of new products which will be covered in the proposed NSPS for residential wood heaters, and the current backlog at OECA, the enforcement and certification arm of EPA, what does the EPA propose to do to protect small businesses who try to certify to the new rule from excessive paperwork backlogs?

22. With respect to the Safe Drinking Water Act and the Clean Air Act, are any of the enhanced oil recovery (EOR) projects referenced in the preamble for the proposed GHG rule for new electric generating units announced on September 20, 2013, complying with anything other than UIC Class II requirements?
 - a. With respect to EPA's Subpart RR-Geologic Sequestration of Carbon Dioxide Rule, are there any Monitoring, Reporting and Verification (MRV) plans that have been submitted to EPA for approval under Subpart RR of the GHG Reporting Program?
 - b. If yes, how many have been submitted? Also, if yes, how many have been approved under Subpart RR of the GHG Reporting Program?
23. According to EPA, the agency initiated the Bristol Bay Watershed Assessment in response to a petition for EPA to exercise its 404(c) authority. Has the agency received any other similar petitions, and if so what has been requested? Has the agency received any petitions concerning the agency's use of 404(c) on any existing permits?
24. Does EPA have any plans to potentially perform studies on or initiate the 404(c) process on any other waters at this time? If so, where?
25. Does EPA have any plans to potentially reevaluate any existing 404 permits pursuant to its 404(c) authority? If so, which ones?
26. The current definition of fill material, finalized in May, 2002, solidifies decades of regulatory practice by unifying the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. However, both EPA and the Corps have stated that they are considering revising the definition of fill material. These changes could mean that certain mining-related activities would be deemed illegal, thereby preventing mining companies from operating. The FY14 Omnibus appropriations bill included language to prevent the Corps from working on any regulation changing the definition of fill material.
 - a. Has EPA engaged in discussions with the Corps on revising the rule?
 - b. What is EPA's rationale for potentially revisiting the well-established division of the Sec. 402 and Sec. 404 programs?
 - c. What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?
29. Some advanced biofuel developers have proposed that EPA consider a pathway to allow for the generation of RINs under the renewable fuel standard (RFS) when renewable hydrogen is used to displace conventional hydrogen in petroleum refining operations. The pathway, if approved, would create an economic incentive to produce hydrogen from biomass sources, including bio-methane collected from landfill emissions and bio-digesters. Renewable hydrogen, if used in refinery hydro-reactors, would increase the fraction of renewable content in the nation's gasoline and diesel supplies.

Discussions regarding a pathway application have been underway since September, 2013. EPA has indicated that, in order to properly consider this pathway, it needs additional technical information, which stakeholders have developed and provided earlier this year. However, EPA has indicated that, currently, it is unable to assess this information or meet with industry experts to discuss it due to the overwhelming demands on the Office of Transportation and Air Quality's (OTAQ) time from other regulatory matters.

- a. Has OTAQ determined a timetable for resuming consideration of a renewable hydrogen pathway under the RFS?
- b. Has OTAQ determined that it cannot devote time to any further processing of RFS pathways at this time, and if so, how long is that expected to last?

The Honorable Joe Barton

- 1. As set forth on EPA's website, the Agency's Clean Air Scientific Advisory Committee (CASAC) provides advice to the EPA Administrator on the technical bases for EPA's national ambient air quality standards.
 - a. Are CASAC advisory committee meetings transcribed?
 - i. If yes, are those transcripts made accessible to the public on EPA's website?
 - ii. If not, will transcripts be prepared going forward and will EPA make those transcripts accessible to the public on the Agency's website?
 - b. Are CASAC advisory committee meetings webcast?
 - i. If yes, are those webcasts archived and made accessible to the public on EPA's website?
 - ii. If not, will EPA webcast these meeting going forward, archive the webcasts and make the webcasts accessible to the public on the Agency's website?
- 2. As set forth on EPA's website, EPA's Science Advisory Board (SAB) advises the agency on technical matters, including reviewing the quality and relevance of the scientific and technical information being used or proposed as the basis for EPA regulations.
 - a. Are SAB advisory committee meetings transcribed?
 - i. If yes, are those transcripts made accessible to the public on EPA's website?
 - ii. If not, will transcripts of those meetings be prepared going forward and will EPA make those transcripts accessible to the public on the Agency's website?
 - b. Are SAB advisory committee meetings webcast?
 - i. If yes, are those webcasts archived and made accessible to the public on EPA's website?
 - ii. If not, will EPA webcast these meeting going forward, archive the webcasts and make those webcasts accessible to the public on the Agency's website?
- 3. As set forth on EPA's website, the Advisory Council on Clean Air Compliance Analysis (COUNCIL) was established to provide advice, information and recommendations on technical and economic aspects of analyses and reports EPA prepares on the impacts of the Clean Air Act on the public health, economy, and environment of the United States.
 - a. Are COUNCIL advisory committee meetings transcribed?

- i. If yes, are those transcripts made accessible to the public on EPA's website?
 - ii. If not, will transcripts of those meetings be prepared going forward and will EPA make those transcripts accessible to the public on the Agency's website?
- b. Are COUNCIL advisory committee meetings webcast?
 - i. If yes, are those webcasts archived and made accessible to the public on EPA's website?
 - ii. If not, will EPA webcast these meeting going forward, archive the webcasts and make those webcasts accessible to the public on the Agency's website?
- 4. In December 2007 the City of Fort Worth partnered with the EPA on the Alternative Asbestos Control Method (AACM) project performed at the Oak Hollow Apartments in Fort Worth, Texas. Upon completion of the AACM project, the EPA prepared a peer reviewed draft report. However, the final version of that report was never published and as a result, the project has entirely stalled despite repeated attempts by the City for clarity and answers.
 - a. Why has the EPA repeatedly decided not to publish legitimate scientific research so that the public and broader scientific community may have access to this data?
 - b. Furthermore, I request copies of all documentation related to the recent "re-review" of documents related to the AACM and the data generated during and after the demolitions as referenced in the April 26, 2013 letter from the EPA to the City of Fort Worth.

The Honorable Joseph R. Pitts

- 1. In Pennsylvania, we have benefitted greatly from having electric generating units that burn coal refuse (also called waste coal) to create affordable, domestic energy. By processing this coal refuse, these units have had significant positive effects on the surrounding environment as well. In fact, to date, these units have been used to reclaim some 8,200 acres of damaged land and improve hundreds of miles of streams.

The EPA's Mercury and Air Toxics Rule (MATS) takes effect next April, however, and among other things, the rule establishes hydrogen chloride and sulfur dioxide emission limitations that are unattainable for most coal refuse fired units. In anticipation, the industry has approached the EPA seeking reconsideration under the rule and has also met with various members of your staff including Acting Assistant Administrator for the Office of Air and Radiation Janet McCabe.

Would you please provide an update on the status of these discussions and the industry's request for reconsideration? What is your schedule for responding? Will you commit to continuing these discussions with the industry in order to avoid shutting down these facilities and harming both the local environment and economy?

- 2. In the preambles of various EPA proposed rules, the agency has specifically mentioned and discussed the environmental benefits associated with reclamation of coal refuse to produce electricity. If the EPA's Mercury and Air Toxics Rule (MATS) is enforced as it is currently written, however, a number of these facilities will likely be forced to close as a result of compliance costs. *Does the EPA have an alternative plan to clean up these coal refuse piles if and when these facilities are forced to shut down as a result of MATS?*

3. I know that one of our colleagues from Pennsylvania, Mr. Rothfus, has been actively engaged on the issue of electrical generating units that process coal refuse and has been seeking some sort of solution that will allow these units to continue in operation after the Mercury and Air Toxics Rule (MATS) takes effect next spring.

As currently written the rule establishes hydrogen chloride and sulfur dioxide emission limitations that are unattainable for most coal refuse fired units. There is significant concern that implementation of the rule will force many plants to shut down and their workers to lose their jobs.

Mr. Rothfus has asked me to invite you and your staff to tour these facilities and see firsthand the sort of positive impacts that they have had on the surrounding areas. *Will you commit today to making this a priority and ensuring that those on your staff who are responsible for this issue will travel and meet with the coal refuse industry to work to find a mutually-agreeable solution?*

4. The EPA's Mercury and Air Toxics Rule (MATS) takes effect next April, and many in the coal industry have expressed significant concern about the associated compliance costs. *To date, how many utility and non-utility coal fired boilers have announced they are shutting down as a result of MATS? How many requests for reconsiderations has the EPA received, and how many has your agency acted upon? What is your schedule for responding to any and all pending requests for reconsideration so that industry can have certainty about their future costs?*
5. The month of January 2014 saw two historic cold snaps in the Eastern United States. The first, the polar vortex, brought the lowest temperatures in decades across the East and Southeast in early January. The second event brought more record-cold temperatures to the Northeast and Midwest, along with paralyzing snow and ice to the Southeast.
 - a. Let me ask some straight-forward yes or no questions:
 - i. Does affordable, reliable electricity play a critical role in promoting economic growth?
 - ii. Does affordable, reliable electricity play a critical role in protecting public health and safety?
 - iii. Does affordable, reliable electricity play a critical role in responding to severe weather and natural disasters, regardless of the causes?
6. Recently, the Chairman of the North Carolina Public Utility Commission and other officials wrote to Acting Assistant Administrator of the EPA, Janet McCabe, about EPA's pending rules for existing power plants. They stated that "It is no secret that the economic recovery across the United States is fragile and many ratepayers struggle to pay their monthly bills, including their utility bills."
 - a. Do you agree that the economic recovery across the United States is fragile?
 - b. Do you agree that many ratepayers struggle to pay monthly utility bills?
 - c. In developing rules, does EPA analyze the impacts on the rates people pay for electricity?
 - d. In conducting that analysis, is there a threshold for electricity price increases that EPA finds unacceptable? For example, if rates are going to go up by ten, twenty, fifty dollars a month per household in communities in Pennsylvania?

- e. We had testimony just last month about how those kinds of rate increases – even twenty dollars a month -- can be too much for many ratepayers, especially in today's economy.
- 7. The Natural Resources Defense Council has proposed an cap-and-trade approach to regulating carbon dioxide emissions from power plants. An analysis of that proposal by the National Economic Research Associates concluded that NRDC's proposal could cost consumers \$13 billion to \$17 billion per year in higher electricity and natural gas prices.
 - a. Is an approach that will mean those kind of higher energy costs acceptable to EPA?

The Honorable Lee Terry

- 1. Are you familiar with the Farmer Identity Protection Act: A bipartisan bill introduced by Crawford, McIntyre, Costa and myself?
 - a. Do you support or oppose?
 - b. Barring legislation, what assurances can you give the farmers of America that their information is safe?
- 2. Last week, you testified before the House Interior Appropriations Subcommittee and said farmers would have greater certainty because you now have put out a list of 50 or more exemptions. Experts in the Clean Water Act have indicated that the certainty you talk about comes about only because EPA has decided broadly to assert jurisdiction in spite of the Supreme Court decisions in SWANCC and Rapanos.
 - a. Can you tell the committee where you have not asserted jurisdiction where you previously claimed it?
 - b. Can you tell the committee how your proposed rule comports with the Court's rulings in SWANCC and Rapanos?
 - c. Is it correct that a farmer only qualifies for any one of these exemptions if the farmer follows NRCS standards?
 - d. Is it true that any – or all – of these exemptions can be changed, curtailed or even eliminated by NRCS without notice to the public and without public input?

The Honorable Michael C. Burgess

- 1. Please list the names, titles, salaries, and dates of Title 42 appointments for all EPA employees compensated under the Title 42 program, including current and past recipients.
- 2. In its response to the GAO's recommendation in 2012 regarding handling of ethics issues under the Title 42 program, EPA wrote that although they disagreed with the recommendation, the agency would soon implement plans that would address issues that arise after appointment under Title 42. GAO stated that these plans may address the concerns documented in the 2012 report and may be the basis for closing the recommendation as implemented. GAO has stated that it is currently reviewing plans issued by EPA and will follow up in December 2013 to understand if additional plans have been released internally to the agency.

- a. What plans has the EPA issued in response to the issues raised by the GAO recommendation? Have additional plans been released internally to the agency?
 - b. Has EPA been in communication with GAO regarding Title 42 issues over the last five months? If so, what is the status and nature of the communications?
3. Does EPA have plans to use authority under Title 42 Section 209 (f)? If so, has EPA developed guidance for implementing such authority?
4. In December 2010, EPA began a pilot of using market salary data to estimate salaries of what Title 42 candidates could earn in positions outside of government given their education, experience, professional standing, and other factors. According to the GAO, this pilot was to conclude in December 2012. What is the status of the market salary pilot? Did EPA analyze the pilot's effect on salary negotiations? If yes, what did the analysis show?
5. EPA's authority to use Title 42 pay scales granted through the annual appropriations process expires in 2015. Does EPA intend to ask for an extension to use this authority? Has EPA had discussions with the Appropriations Committees in the House and/or Senate regarding such an extension? Does EPA intend to request that it be granted Title 42 hiring authority through the authorizing committees, either in the House or Senate?
6. It appears that a number of executive branch agencies are working on methane. EPA is looking to regulate oil wells with associated gas, DOE is holding roundtables, DOI is looking at methane capture for royalties, the WH is issuing white papers and I think I'm probably missing a few. Can you give the committee an update on this issue, who is on point, how is it being coordinated, where is it headed and what are you doing to avoid duplication of effort and overlapping regulatory and budget requirements?
7. Please provide the committee with the research funding EPA has provided to the current ozone CASAC panel members, the research institutions with which the panel members are associated, and the name and amount of each project grant by individual or research institution?
8. EPA's website for tracking regulations used to indicate that EPA planned to propose ozone standards in 2014, but now has no schedule indicated.
 - a. What is EPA's current schedule for proposing new ozone standards?
 - b. What is EPA's current schedule for finalizing the standards?
9. The most recent ozone standards were published in 2008, and have not yet been implemented. In proposing new standards next year, will EPA propose retaining the current standards set in 2008?
10. EPA estimated that the 2010 ozone NAAQS reconsideration could have cost American manufacturing, agriculture and other sectors up to \$90 billion per year. I'm concerned that we are driving manufacturing out of the U.S. to other countries with lax environmental standards.
 - a. In analyzing these regulations, does EPA consider the economic and environmental effects of driving manufacturing offshore to countries with little or no environmental controls? If not, shouldn't the agency consider that?
11. Regarding the Keystone XL Pipeline, has EPA completed its analysis of SEIS and will EPA try to delay the process again?

12. In this rule, I understand that EPA contends the proposed rule would actually result in fewer federal jurisdictional determinations and provide greater clarity to the regulated community.

Furthermore, EPA claims that by codifying a specific exclusion for ditches located in uplands and drain only uplands should result in far fewer man made drainage ditches becoming subject to the Clean Water Act's (CWA) regulatory and permitting requirements.

However, the proposed rule also contains an entirely new and significantly expanded definition of "tributary" that includes any feature (e.g., natural or manmade) that has a bed, bank, ordinary high water mark, and eventually contributes flow (surface or subsurface) to "Traditional Navigable Waters." Furthermore, the proposed rule's definition of tributary specifically includes manmade ditches, pipes, or culverts.

In my District (Texas 26th), like many other places in the country, there are literally thousands of miles of manmade roadside drainage ditches installed and maintained by county governments for primary purpose road safety. These roadside drainage ditches are located in both uplands and other areas.

How can these manmade roadside drainage ditches benefit from the proposed rule's exclusion when these ditches also considered a tributary under the proposed rule?

13. I understand that the EPA worked to create a scientific study to illustrate the need for this regulation. This scientific report, entitled "Connectivity of Streams and Wetlands to Downstream Waters" states that all waters require federal protection, regardless of size or significance in connectivity.

In the *Rapanos* and the *SWANCC* decisions that preceded it, the Supreme Court made clear that there is a limit to federal jurisdiction under the CWA, specifically rejecting the notion that any hydrologic connection is a sufficient basis to trump state jurisdiction. Do you think that the term "significant nexus" should be quantified in order to ensure that it does not extend jurisdiction to waters that have a de minimus connection to jurisdictional waters? Perhaps this is something that the National Academy of Science could look into?

14. Why didn't the EPA wait until the scientific study's Science Advisory Board panel gave their final recommendations (expected in May/June) before proposing the rule?

The Honorable Bill Cassidy

1. My area has many communities who feel particularly strapped by the price tag required for compliance with EPA regulations under the Safe Drinking Water Act. I noticed the President's proposed budget provides that 30 percent of state allocations from the Drinking Water State Revolving Loan Fund would (DWSRF) be used for debt forgiveness.
- How does this use of the Drinking Water State Revolving Loan Fund compare to other needs addressed by the DWSRF?
 - In 2009, the American Recovery and Reinvestment Act doubled the amount made available to DWSRF accounts. How much of the debt forgiveness is meant to cover loans made for the "shovel ready projects" covered by this spending?

- c. From a practical perspective, what types of needs ordinarily addressed by the DWSRF will be squeezed out by use of DWSRF money this way?
 - d. Does the Obama Administration consider the current DWSRF self-sustaining?
2. The Safe Drinking Water Act's funding is meant to assure compliance with the public health-based mandates of the law, not merely build infrastructure. I noticed the President's budget contains a Sustainable Water Infrastructure Policy to "develop sustainable systems that employ effective utility management practices to build and maintain the level of technical, financial, and managerial capacity necessary to ensure long-term sustainability."
- a. Can you assure me, apart from a general desire to provide technical assistance to drinking water systems, that this particular program will not divert precious resources away from compliance and towards construction planning in certain communities?
3. Last week, EPA and the Corps of Engineers jointly released a proposed rule relating to "waters of the United States."
- a. Before issuing the proposed rule, did EPA assess whether the proposed rule could affect the building of new energy infrastructure? For example:
 - i. Did EPA analyze whether it may be more difficult to build a new power generating facility, or expand an existing one?
 - ii. Did EPA analyze whether it may be harder to lay new pipelines or power lines because of the need to obtain wetlands or other permits?
 - b. Has EPA analyzed whether the proposed rule would trigger new permitting requirements relating to maintaining existing energy infrastructure? For example:
 - i. Will there be a need for new permits to do routine maintenance on transmission lines or pipelines? Or to obtain individual permits for activities that are currently covered under general or nationwide permits?
4. As you know, EPA issues many regulations that can impose very large compliance costs, many of which are ultimately passed on to consumers. Last year, I introduced the Energy Consumers Relief Act (HR 1582) to provide greater transparency and oversight over EPA's multi-billion dollar energy related-rules.
- a. At the time the House considered that bill, the Congressional Budget Office estimate indicated there would be about 25 more energy-related EPA rules in the next 5 years that would cost \$1 billion or more to implement.
 - i. Is CBO's estimate accurate? Are there really 25 billion-dollar energy related rules coming out of the EPA in the next five years?
 - ii. If you don't know, can you get back to the Committee about whether the estimate is accurate?
 - b. Can you provide us a list of all rules EPA is currently working on or plans to work on in the foreseeable future that the agency expects will impose compliance costs of \$1 billion or more?

The Honorable Adam Kinzinger

As you know, the most pressing issue facing the biodiesel industry, and indeed all renewable fuels industries, is the EPA's recently proposed rule for volumes under the Renewable Fuel Standard (RFS). Biodiesel companies across the country – based on the clear signals of support sent by this Administration – invested their time and resources to build biodiesel plants that would assist in meeting the targets set by the RFS.

Biodiesel is an unmitigated RFS success story. It is the first EPA-designated Advanced Biofuel being produced on a commercial-scale across the country. The industry, with the help of strong energy policy, has crossed the billion-gallon threshold for three consecutive years, and this year is on pace for a record year of more than 1.7 billion gallons. Gallon for gallon, according to EPA's own calculations, biodiesel is reducing greenhouse gas emissions by 57 to 86 percent. All of this is happening as biodiesel blends at the pump – usually of 5 percent or less – are saving consumer's money.

Under the proposal EPA believes biomass based diesel can compete just as it did in 2013 even though it would dramatically cut production back to 1.28 billion gallons. As proposed, the advanced standard would also be reduced to 2.2 billion gallons. Based on the equivalence value of our fuel and nesting, there would be a maximum on 290 million gallons available for biomass-based diesel, other advanced fuels and cellulosic production. With potential for carryover of excess 2013 volume into 2014, we could see a market closer to 1 billion gallons. Obviously, cutting an industry from a 2 billion gallon production rate down close to 1 billion gallons would cause incredible harm. Plants would close. People would be out of work. Further, EPA has proposed this cut for 2014 and 2015, for two years, sending a terrible signal to investors and entrepreneurs who are poised to continue building this industry.

In this regard, please provide written responses to the following questions:

1. With no feedstock, infrastructure or compatibility issues, what other factors did the administration take into account when not increasing the RVO?
2. What factors has the industry not met in order to have its volume increased to at least 1.7 billion gallons? What information do you still need?
3. Have you taken into consideration how potential Argentinian biodiesel imports will impact the volume of RFS qualifying biodiesel in 2014?
4. When do you anticipate the 2014 RVO being finalized?
5. Are there aspects of biodiesel that make you uncomfortable with it as a replacement to diesel fuel?

The Honorable H. Morgan Griffith

1. In 1972 when the Amendments to the Federal Water Pollution Control Act were being discussed by Congress, Senator Edward Muskie of Maine, in addition to strongly emphasizing the need to protect the nation's waterways, reminded the chamber that there were "three essential elements" to the legislation: "uniformity, finality, and enforceability." How does your interpretation of your authority under the Clean Water Act comport with the notion of permit finality?
2. Do you agree that finality is an important consideration for permits? How does EPA intend to provide certainty to the regulated community that they can receive due process to have their projects fairly

considered, and can rely on their permits once they are issued, in light of the agency's recent actions concerning Pebble and Spruce?

The Honorable Bill Johnson

1. You've said that hydraulic fracturing can be done safely and have agreed with former EPA Administrator Lisa Jackson that there have been no confirmed cases of hydraulic fracturing impacting drinking water. Given that the President's Climate Action Plan relies heavily on the use of natural gas, what is your vision for getting the American public to understand that hydraulic fracturing is safe and that fracking has unlocked an American energy revolution that is lowering all Americans energy prices, creating jobs, helping to lower GHG emissions and revitalizing such industries as the manufacturing, steel and chemical sectors?
2. I am aware that the EPA is considering whether a health-based standard is possible for this industry, and I applaud your consideration of this discretionary approach. I also understand that the brick industry has supplied you with all the information necessary to evaluate a health-based compliance alternative for every major source. Could you please describe in detail: What impediments you see to establish a health-based rule for this small industry comprised of a large number of small businesses and how those impediments could be overcome? It would make sense if you would use this approach, since it seems to be both protective of the environment, achievable, and allow the industry to survive.
3. An emission standard is broadly defined in the Clean Air Act. Why would the EPA look to a single facility to establish the emission level for all facilities to meet, rather than consider a health-based metric as a possible emission standard format?
4. The rule-makings for the brick industry have been impacted by the EPA's "sue and settle" approach to dealing with third-party lawsuits on both rounds. The now-vacated MACT was rushed in 2003 due to a pending lawsuit from an environmental group, resulting in a rule that was vacated by the courts for its deficiencies. Now, this industry is facing another court-ordered schedule based on a consent decree that you recently accepted. What assurances can you give the Committee, and this industry, that the schedule will not be used as justification for yet another rushed, deficient rule? What can you do to ensure that new rule will include a full consideration for the alternative approach of using a combination of both health-based and work-practice standards to ensure that the requirements of the Clean Air Act are followed and the environment is protected, without requiring huge burdens on a critical industry that provide limited to no environmental benefit?
5. My office has been coordinating with the Ohio Department of Natural Resources (ODNR), Ohio Environmental Protection Agency and your Agency to clarify what the Ohio Department of Natural Resources would need to include in their Risk Based Data Management System in order to be fully compliant with the Emergency Planning and Community Right-to-Know Act. Can your Agency provide ODNR with the requested 'check list' of all elements, as soon as possible, that would need to be included in their upgraded database to ensure that full compliance is met?

The Honorable Gus Bilirakis

1. Administrator McCarthy, Tampa Electric Company serves my constituents in Hillsborough County, Florida. I understand that they recently completed a ten year, \$1.2 billion emissions reduction initiative which reduced CO₂ emissions by 20% compared to 1998 levels. Their most significant CO₂ reductions began in 2005. As 2005 is also the suggested baseline year for reductions under EPA's 111d rule for existing power plants, recognition of these reductions is important to protecting Tampa Electric customers

who are benefiting from and paying for these long-term investments. How does the EPA intend to recognize early reductions, such as Tampa Electric's, in its upcoming 111d proposal?

The Honorable Diana DeGette

As you know, in 2010 former Congressman Hinchey and I requested an EPA study to determine the potential impacts of hydraulic fracturing on drinking water. I understand that the draft report will be available in late 2014. In your FY2015 budget request, you ask for \$6.1 million for the study.

1. Are any additional progress reports forthcoming before the draft report is released?
2. When do you expect this paper to be final?

One part of the study I am especially interested in is the case studies.

You identified five sites for retrospective case studies and directed EPA, the state and industry to be present during sampling to verify and review the samples for quality assurance. At about this time last year, EPA's Tier 2 data quality assurance was underway.

3. What is the status of this effort with respect to these five sites?

An important part of the drinking water study is the inclusion of several prospective case studies. These case studies will document the hydraulic process at each stage including drilling, completion, and production. Measurements will be taken before and after each stage. It was my understanding that pursuant to investigations, there were agreements between industry and EPA to develop these case studies together.

4. At this time last year, EPA was in the process of identifying locations. Have these locations been identified? If not, can you provide specific reasons why the locations have not yet been identified?
5. What are the specific criteria required for choosing these locations? If the locations have not been chosen, what criteria are difficult to satisfy?
6. Are the states and industry collaborating with EPA as planned to develop the prospective studies? If not, what is impeding their participation?
7. Will analysis of the prospective studies be included in the draft report and final report, or will this need to be incorporated into a follow-up report?

For FY2015, the EPA is proposing to spend \$1 million to support states and tribes in making permitting decisions and to provide oversight related to implementation of EPA's guidance on hydraulic fracturing with diesel fuels.

8. Can you provide some examples of how you will assist states and tribes in following this guidance?
9. Will states that have primacy for UIC wells get assistance as well?

In collaboration with USGS and DOE, EPA has budgeted about \$8 million towards research on the potential impacts of hydraulic fracturing on air, ecosystem, and the water quality.

10. What were the results of this effort from last year?

11. What are your milestones for this project this year?
12. Will you keep the public informed of your progress/findings as the research unfolds?
13. Do you expect this to be an ongoing effort that flows again into the following fiscal year?
14. What are the respective roles of DOI, DOE, and EPA in the effort?

The Honorable Doris O. Matsui

1. In 2010, Congress passed legislation of mine that protects American consumers from the formaldehyde toxin used in common household items. It is my understanding that the EPA is still in the drafting phase for the final rule that the comment period ended last October. What is your anticipated timing for completing your work on formaldehyde emissions in composite wood products?
2. Do you expect to harmonize your regulations with the California Air Resources Board with respect to laminated products as directed by Congress?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Billy Long

1. Administrator McCarthy, during the hearing you stated that there are currently wood stoves available on the market that meet the recently proposed New Source Performance Standards for residential wood heaters. Would you please provide the Committee a list detailing what brands and models of wood stoves are on the market today that meet the proposed standards?

The Honorable Gene Green

1. Under the FY 2015 EPA budget proposal, does the EPA have any money allocated for new Superfund cleanup sites?
2. Was EPA able to begin any new Superfund projects during the FY 2013 – FY 2014 timeframe?

United States Senate
WASHINGTON, DC 20510-2003

April 17, 2014

Ms. Laura Vaught
Associate Administrator for Congressional and Intergovernmental
Relations
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, Room 3426 ARN
Washington, DC 20460-0003

Dear Ms. Vaught:

I am writing to request your consideration of the attached
correspondence from Mr. Rob Gore. Please respond directly to
Mr. Gore and send a copy to Michelle McGrain of my staff. If you
have any questions, please call Ms. McGrain at (202) 224-4654.

Thank you for your assistance.

Sincerely,



Barbara A. Mikulski
United States Senator

BAM:cst
Enclosure

April 9, 2014

The Honorable Senator Barbara A. Mikulski
503 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Mikulski,

As a Maryland resident, and Regional Human Resources Manager at Mohawk Industries ("Mohawk"), I want to voice my agreement with, and support of, the attached letter that Barbara Goetz, Mohawk's Deputy General Counsel, sent to Scott Jordan, the General Counsel of the EPA Air and Radiation Law Office, regarding pending National Emission Standards for Hazardous Air Pollutants ("NESHAPs") for the Clay Ceramics Manufacturing source category that the EPA is required to issue by August 28, 2014. I am concerned that applying new major source NESHAPs to the floor and wall tile industries will create a stigma of major source pollution in the eyes of Mohawk's customers and negatively impact U.S. business in the face of stiff competition from China and Mexico. Further, I feel that NESHAPs for these industries are unnecessary and will produce no environmental benefit, as neither industry will include major sources as of the date of the proposed NESHAPs.

In light of these considerations, and for the legal rationale outlined in the attached letter, I kindly request that you please ask the EPA to limit its proposed NESHAPs for clay ceramics facilities located at major sources only to those industries that will include major source facilities as of the date of the proposed NESHAPs. Thank you for your consideration of this request.

Sincerely,

Rob Gore
Regional Human Resources Manager
Dal-Tile Corporation
9220 Gaither Road
Gaithersburg, Maryland 20877

Cc: Teri Curtis
Michelle McGrain

Attachment:

BARBARA M. GOETZ
Deputy General Counsel
Hard Surfaces



(800) 241-4494 • ext. 42645
(706) 624-2645 • ext. 42645
Facsimile: (706) 624-2483
E-Mail: barbara_goetz@mohawkind.com

March 19, 2014

Scott Jordan
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Major Source NESHAPs for Clay Ceramics Manufacturing Facilities

Dear Mr. Jordan:

I write on behalf of Mohawk Industries ("Mohawk") to request that the EPA forego proposing and promulgating major source National Emission Standards for Hazardous Air Pollutants ("NESHAPs") for the floor and wall tile subcategories in the clay ceramic manufacturing source category. Floor and wall tile manufacturing are distinguishable from sanitary ware in its raw material use and kiln firing practices. Most importantly, only the sanitary ware subcategory will contain major sources: thereby sanitary ware is the only subcategory for which EPA is required to propose and promulgate NESHAPs.

By way of background, Mohawk is the world's largest manufacturer of ceramic tile products, and manufactures much of its clay ceramic floor and wall tile product lines in the United States. Mohawk manufactures its ceramic tile products through its subsidiaries Dal-Tile Corporation ("Dal-Tile") and Dal Italia LLC. Recently Dal-Tile purchased and merged with the Marazzi family of entities, including Monarch Ceramic Tile and American Marazzi Tile.

I. As There Will Be No Major Sources of Floor and Wall Tile Manufacturing, EPA is Not Legally Required to Propose and Promulgate Major Source NESHAPs for these Industries

A. Rulemaking Background

Section 112(c)(1) of the CAA requires EPA to publish an initial list of categories of "major sources" and "area sources" of HAPs within one year of enactment of the CAA Amendments of

1990. EPA published the initial source category list on July 16, 1992. Included in this list was the major source “clay products manufacturing.” On May 16, 2003, EPA issued a final rule establishing separate NESHAPs for “brick and structural clay products (“BSCP”) manufacturing” and “clay ceramic manufacturing.” The rules for these NESHAPs replaced the original “clay products manufacturing” source category with these two source categories. On March 13, 2007, the D.C. Court of Appeals vacated these NESHAPs and remanded the matter for further proceedings consistent with the opinion. *Sierra Club v. EPA*, 479 F.3d 875 (D.C. Cir. 2007). Once vacated, EPA was required to re-promulgate emissions standards. On March 11, 2008, the Sierra Club once again sued EPA seeking to have the court compel the agency to promulgate regulations as required by the CAA. On April 18, 2013, EPA and Sierra Club entered into a consent decree and the parties entered into a stipulation on February 2, 2014 that requires EPA to propose and promulgate NESHAPs for BSCP and clay ceramics manufacturing facilities located at *major sources* by August 28, 2014 and June 30, 2015, respectively.

B. Analysis

As an initial matter, § 112(d)(1) of the CAA requires that “[t]he Administrator shall promulgate regulations establishing emission standards for each category or subcategory of *major sources* and area sources of HAPs. The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards” [emphasis added]. EPA has found it appropriate to do so when categories comprise “distinctly different types of processes and products.” National Emission Standards for Hazardous Air Pollutants: Revision of Source Category List and Schedule for Standards under Section 112 of the Clean Air Act, 64 FR 63025 (Nov. 18, 1999). Further, as pointed out in the concurring opinion in *Sierra Club*, such sub-categorization may be necessary in setting a MACT floor to keep the relationship between achieved and achievable (used to set the MACT floor) in accord with common sense and the reasonable meaning of the statute. *Sierra Club v. EPA*, 479 F.3d at 885.

Turning to “clay ceramics manufacturing,” this source category is composed of three distinct manufacturing processes: (1) single-fire (“floor”) tile, (2) double-fire (“wall”) tile, and (3) sanitary ware. Since these processes use different raw materials, and differing kiln firing practices that produce distinctly different products, it is entirely appropriate for EPA to distinguish between them in developing MACT standards for the clay ceramic manufacturing sector, and we respectfully request that EPA makes this distinction. Developing a MACT standard along those lines, will leave only one subcategory of the clay ceramic manufacturing source category with major sources: namely sanitary ware.

Since the consent decree and subsequent stipulation between the Sierra Club and EPA requires EPA to establish emission standards only for categories and subcategories of *major sources*, the agency is under no obligation to establish standards for floor and wall tile. This is because at the time it is scheduled to propose the regulations there will be no *major sources* in either the floor or wall tile subcategories of the industry. If EPA determines that these three industry sectors represent different processes and products that require different MACT determinations, then it need only establish MACT standards for the operations that actually have major sources.

The plain language of the consent decree entered into by EPA with the Sierra Club requires EPA to establish MACT standards for the “clay ceramic manufacturing” source category. It does not specify how or even if EPA should establish a MACT floor for each of the manufacturing sectors within that source category, or how EPA should distinguish between and regulate these separate industry sectors. Since certain sanitary ware manufacturing facilities are either major sources or located at facilities with major sources, EPA will be required to establish a MACT standard for this portion of the industry. Proposing and promulgating a MACT standard for sanitary ware will fully satisfy EPA’s obligation imposed by the consent decree to establish emission standards for the clay ceramic manufacturing source category.

In making this request, Mohawk is not asking EPA to delist wall tile or floor tile under § 112(c)(9), as such a request is moot. EPA does not need to delist an entire source category, and what is more, neither wall tile nor floor tile has ever been listed as a specific source category or subcategory. Thus, EPA has ample discretion to establish a MACT standard for the clay ceramic source category that includes the major sources of sanitary ware manufacturing, but which excludes floor and wall tile because no major source exists.

II. Installation of Pollution Control Equipment at Mohawk’s Wall and Floor Tile Manufacturing Facilities

A. Floor Tile

As of October 10, 2013, all of Mohawk’s former floor tile major source manufacturing facilities achieved synthetic minor source status due to significant voluntary emission reductions. Following below is a brief summary of the voluntary emission reductions Mohawk took at its three—now synthetic minor—floor tile sources:

- Monarch Ceramic Tile, Inc. - Florence AL
 - Installed Dry Injection Fabric Filter (DIFF) air pollution control systems to capture HF and HCl emissions from all three (3) kilns.
 - Amended operating permit, enforcing the emission reductions, issued by the Alabama Department of Environmental Management on September 4, 2012.
- Dal Italia LLC - Muskogee, OK
 - Installed Wet Caustic Scrubber air pollution control systems to capture HF and HCl emissions from all six (6) kilns.
 - Amended operating permit, enforcing the emission reductions, issued by the Oklahoma Department of Environmental Quality on October 10, 2013.
- American Marazzi Tile, Inc. - Sunnyvale, TX
 - Installed Dry Injection Fabric Filter (DIFF) air pollution control systems to capture HF and HCl emissions from all five (5) kilns.
 - Amended operating permit, enforcing the emission reductions, issued by the Texas Commission on Environmental Quality on April 12, 2013.

All of these facilities have obtained the necessary state air permits and as demonstrated by stack tests, are being operated in compliance with applicable HAP emission regulations.

B. Wall Tile

Currently, the emissions from Dal-Tile's wall tile facility in El Paso would qualify it as a major source of HAPs. We are pleased to inform EPA that Mohawk has voluntarily committed the capital to install pollution control technology that will reduce this facility's emissions below the major source threshold prior to EPA's issuance of proposed NESHAPs. The Texas Commission on Environmental Quality is expected to issue an amended air permit, as soon as today, in response to Dal-Tile's request for a permit alteration to install wet scrubbers at this El Paso facility. After installation—which will be completed by mid-August 2014—there will be no ceramic floor or wall tile manufacturer in the country that would meet or exceed the major source designation. As a result of the action by Mohawk's and others in the tile industry, emission reductions have occurred at least four years earlier than if the industry had waited for EPA to promulgate major source NESHAPs.

III. Establishing a MACT Standard

Due to the lack of major sources, if EPA were to set MACT standards for floor and wall tile manufacturing, the agency will have difficulty following the requirements of § 112(d)(3) in setting the MACT floor for new and existing major sources. If EPA attempts to determine the best performing sources from synthetic minor and other area sources, and particularly if the agency portions emissions data on per kiln basis to derive "sources," EPA is potentially opening its rulemaking up for further legal challenge. Difficulties in setting the MACT floor lead, in part, to a legal challenge of the previous clay ceramics manufacturing NESHAPs, and the vacatur of those standards by the DC Circuit in *Sierra Club v. EPA*, 479 F.3d 875, as well as the vacatur of MACT standards for other source categories. See *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855 (D.C. Cir. 2001); *Natl. Ass'n of Clean Water Agencies v. E.P.A.*, 734 F.3d 1115 (D.C. Cir. 2013). Given the potential challenges to the MACT emission standards, EPA's resources would be better served to enact MACT standards only for major sources that do exist, namely sanitary ware major sources. Otherwise EPA may be left to defend a regulation that does not apply and offers no additional human health or environmental benefits.

IV. All Existing Floor and Wall Tile Sources Are Appropriately Regulated

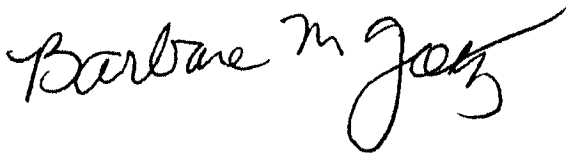
All existing floor tile and wall tile manufacturing facilities are or will be area sources, and are regulated by both the federal clay ceramics manufacturing area source NESHAPs and state emission regulations. For example, Texas sets maximum allowable emission rates, pursuant to 30 TAC 116.115(b)(2)(F), for each permitted source. These rates, as demonstrated in the permits for American Marazzi Tile, Inc., Sunnyvale, TX, and Dal-Tile, El Paso, TX, includes stringent HF and HCl rates in lbs/hour and TPY. These rates ensure that human health and the environment are sufficiently protected. No additional benefit to human health and the environment would result from the promulgation of major source NESHAPs for floor and wall

tile manufacturing. Proposing and promulgating MACT standards will result in over-regulation.

Should the floor tile or wall tile industry propose a new major source (or expand the emissions of an existing source to cross the major source threshold), pollution control technology is readily available to enable any new wall and floor tile facility to be below the major source threshold. Therefore the likelihood of a new major source, reconstruction or modification of a plant to become a major source is very low. However, if there were a new major source EPA, or the state, has authority to perform a case-by-case MACT evaluation through already established permit rules for the source under CAA § 112 (g). This rule applies to all new major sources of HAPs even if they are not a listed source category or subcategory.

For the reasons set forth above, Mohawk respectfully requests that EPA set major source NESHAPs only for sanitary ware and not for wall tile and floor tile manufacturing.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara M. Goetz". The signature is fluid and cursive, with the first name "Barbara" being more legible than the last name "Goetz".

Barbara M. Goetz
Deputy General Counsel – Hard Surfaces

cc: Peter Tsirigotis, U.S. EPA
Steve Fruh, U.S. EPA
Jeffrey Telander, U.S. EPA
Keith Barnett, U.S. EPA
W. Bruce Pasfield, Alston & Bird LLP

Congress of the United States
Washington, DC 20515

May 1, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

The Honorable John M. McHugh
Secretary
Department of the Army
The Pentagon, Room 3E700
Washington, D.C. 20310

Dear Administrator McCarthy and Secretary McHugh:

We write to express our serious concerns with the proposed rule re-defining the scope of federal power under the Clean Water Act (CWA) and ask you to return this rule to your Agencies in order to address the legal, economic, and scientific deficiencies of the proposal.

On March 25, 2014, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) released a proposed rule that would assert CWA jurisdiction over nearly all areas with any hydrologic connection to downstream navigable waters, including man-made conveyances such as ditches. Contrary to your agencies' claims, this would directly contradict prior U.S. Supreme Court decisions, which imposed limits on the extent of federal CWA authority. Although your agencies have maintained that the rule is narrow and clarifies CWA jurisdiction, it in fact aggressively expands federal authority under the CWA while bypassing Congress and creating unnecessary ambiguity. Moreover, the rule is based on incomplete scientific and economic analyses.

The rule is flawed in a number of ways. The most problematic of these flaws concerns the significant expansion of areas defined as "waters of the U.S." by effectively removing the word "navigable" from the definition of the CWA. Based on a legally and scientifically unsound view of the "significant nexus" concept espoused by Justice Kennedy, the rule would place features such as ditches, ephemeral drainages, ponds (natural or man-made), prairie potholes, seeps, flood plains, and other occasionally or seasonally wet areas under federal control.

Additionally, rather than providing clarity and making identifying covered waters "less complicated and more efficient," the rule instead creates more confusion and will inevitably cause unnecessary litigation. For example, the rule heavily relies on undefined or vague concepts such as "riparian areas," "landscape unit," "floodplain," "ordinary high water mark" as determined by the agencies' "best professional judgment" and "aggregation." Even more egregious, the rule throws into confusion extensive state regulation of point sources under various CWA programs.

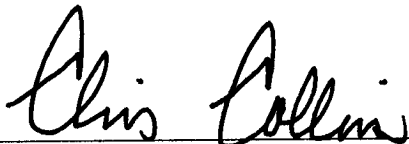
In early December of 2013, your agencies released a joint analysis stating that this rule would subject an additional three percent of U.S. waters and wetlands to CWA jurisdiction and that the rule would create an economic benefit of at least \$100 million annually. This calculation is seriously flawed. In this analysis, the EPA evaluated the FY 2009-2010 requests for jurisdictional determinations – a period of time that was the most economically depressed in

nearly a century. This period, for example, saw extremely low construction activity and should not have been used as a baseline to estimate the incremental acreage impacted by this rule. In addition, the derivation of the three percent increase calculation did not take into account the landowners who – often at no fault of their own – do not seek a jurisdictional determination, but rather later learn from your agencies that their property is subject to the CWA. These errors alone, which are just two of many in EPA's assumptions and methodology, call into question the veracity of any of the conclusions of the economic analysis.

Compounding both the ambiguity of the rule and the highly questionable economic analysis, the scientific report – which the agencies point to as the foundation of this rule – has been neither peer-reviewed nor finalized. The EPA's draft study, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," was sent to the EPA's Science Advisory Board to begin review on the same day the rule was sent to OMB for interagency review. The science should always come before a rulemaking, especially in this instance where the scientific and legal concepts are inextricably linked.

For all these reasons, we ask that this rule be withdrawn and returned to your agencies. This rule has been built on an incomplete scientific study and a flawed economic analysis. We therefore ask you to formally return this rule to your agencies.

Sincerely,



CHRIS COLLINS
Member of Congress



KURT SCHRADER
Member of Congress



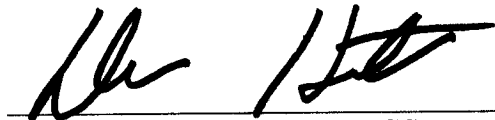
BILL SHUSTER
Chairman
House Committee on
Transportation and Infrastructure



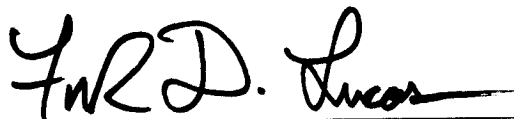
LAMAR SMITH
Chairman
House Committee on
Science, Space, and Technology



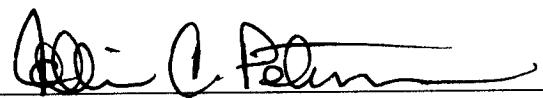
FRED UPTON
Chairman
House Committee on
Energy and Commerce



DOC HASTINGS
Chairman
House Committee on
Natural Resources



FRANK LUCAS
Chairman
House Committee on Agriculture



COLLIN PETERSON
Ranking Member
House Committee on Agriculture

Ed Whitfield

Ken Calvert

Ron Lambert

Jim Walker

Steve King

JT Smith

Dr Yarny

Dan Riker

John Kotter

Fah Uela

Bill Byrnes M.C.

Ron E. Foster

Vietnam
Lynn Baker

Adrian Pariter

John G. Manning

John Banner

Walter B. Jones

Mike Simpson

~~Charles B. Akers~~

Bill Owens

Tom Sisk

Jim Sundman WI-05

Robert J. Withers VA-01

Rat Tiliu

Sydney P. Lummis

J P Lummis

Bazzy

Tim Hurlburt

Alaska Blackburn

Ken Yoder

Julie Wink

Odd Roberts

Jan F. L.

Mark V. Amaro

Van H. J.

Milly P. Pompeo

Joe Baratta

Mike Karanthod

John Henry

Gene R. Tipton

Jim Bidmstein

Long Adams

T. R.

Chuck Fleish

Paul Scott

R. A. Nam

Thomas Massie

Brett Guthrie

Jim Jim M.C.

Ch Stewart

Ann Sch

Larry Bueh

~~Tom~~ Tom

Kay Jones

Bill Fum

16 Mar 1991

Highland

D. Bunker

Bill Caridy

Gregg Harper

Glen GT Thompson

Archie Rye (M-03)

La Van

Jayong

Vicky Hartzler

Lynn Jenkins

Ken Cane

Gene Womack

Roger Williams

Jaime Herrera Beutler

Terri Sewell

Tin L. L. (AR-02)

Fred R. W. W.

A. P. C.

Sam S. S.

Alan S.

Paul N.

Dilly Song

Susan W. Brooks

Mark Kelly

J. J.

Bill Johnson

Andreas

Bob H.

Bob H.

Mike S.

Joe A.

Steve S.

Andy B.

Steve S.

Ken R.

Rail R. Labrador

Steve S.

Steve S.

Will S.

R. Woodall

CPH

Quine Black

Mo Brooks

B

Kay W. Smith

Paul Jones

Ch Bondary

Nick Smith

John Culberson

Ed. M. Zilinski

Luke Murren

Mark Wayne Mullin

Pat K. Stutz

Don B. Agel

Ch. J. Hunt

Hunt

Sam Johnson

Mark Stutz

~~AWWWWW~~

CE W. D. Tut

Sam Krystas

Jeffrey M. Mays

Tom Mays

Tom Rice

John H. H. 11/11-03

John H. H. 11/11-03

Robert Pittenger

Pete Olson

Pat H.

H. V.

S. H.

Rene J. H.

Kevin M. C.

Virginia H.

Mar 7/11

Kevin H.

Erik Paulsen

Joe Heck

John E.

Tom Marino

Darin H.

Michael A. H.

K. M. H.

Jim H.

St. Chab.

Rubin H.

Greg Walden

Howard Cobb

Ja Borton

Frank R. Wiley

R. Rasmussen

Kerry Bestwick

Cathy McNamee-Rodgers

Paul Cook

Shane R. Lettman

Jim Rahall

Joe Wilson

Scott Smith

Michael R. Jones

Angela Miller

~~_____~~

Patrick J. McHenry

Howard O. Buckner

Eades, Cassandra

From: Lewis, Josh
Sent: Tuesday, May 27, 2014 1:08 PM
To: Eades, Cassandra; Mims, Kathy
Cc: Mackay, Cheryl
Subject: FW: Member Letter to Administrator McCarthy on Comment Period for upcoming GHG rule
Attachments: Final GHG 120 day comment period letter.pdf

For CMS...

From: Orth, Patrick [mailto:Patrick.Orth@mail.house.gov]
Sent: Friday, May 23, 2014 2:37 PM
To: Distefano, Nichole; Lewis, Josh
Cc: Baker III, John; Beukelman, Jan; Hart, Ryan (Rep. Jason Smith)
Subject: Member Letter to Administrator McCarthy on Comment Period for upcoming GHG rule

Nichole and Josh – attached is a letter from 178 bipartisan Members of the House asking ‘for a comment period of at least 120 days on the forthcoming new source performance standards for existing coal-based power plants.’ My boss, Mr. Johnson (OH), Mr. Thompson (MS), Mr. Smith, and Mr. Matheson were the 4 co-leads on the letter. I’ve copied the full list of names below since many signatures are hard to read. Please let us know if you have any questions and have a great holiday weekend.

Best regards,

Patrick

Patrick Orth
Legislative Director
Congressman Bill Johnson, OH-6
202-225-5705
patrick.orth@mail.house.gov

Bill Johnson
Bennie Thompson
Jason Smith
Matheson
Steve Daines
Dennis Ross
Walter Jones
Tom Rooney
Gene Green
Reid Ribble
Dave Jolly
Collin C. Peterson
Jim Costa
Kevin Cramer

Mario Diaz-Balart
Jeff Miller (FL)
Henry Cuellar
Randy Hultgren
David McKinley
Steve Southerland
Daniel Webster
Ted Yoho
John Duncan (TN)
Lee Terry
Steve Stivers
Ander Crenshaw
Stephen Fincher
Ed Perlmutter
Morgan Griffith
Sam Graves
Paul Broun
James Lankford
Vicky Hartzler
Billy Long
Bob Latta
Tom Price
Mac Thornberry
Dan Benishek
Steve King
Steven M. Palazzo
Jason Chaffetz
Phil Roe
Rob Bishop
Mike McIntyre
Robert Aderholt
Bob Gibbs
Dave Loebsack
Shelley Moore
Capito
David Joyce
Bill Huizenga
Mark Meadows
Gus Bilirakis
Alan Nunnelee
Trent Franks
Spencer Bachus
Pete P. Gallego
Jackie Walorski

Blaine
Luetkemeyer
Diane Black
Tom Reed
Patrick J. Tiberi
Cynthia Lummis
Mick Mulvaney
Gregg Harper
Aaron Schock
Ileana Ros-
Lehtinen

Howard Coble
Steve Pearce
Jeff Fortenberry
Ann Kirkpatrick
Keith Rothfus
Robert Pittenger
Cheri Bustos
David Scott
Tom Cole
Adam Kinzinger
Scott Garrett
Markwayne Mullin
Kristi Noem
Mike Rogers (AL)
Tim Walberg
Ann Wagner
Tom Graves
Mark Amodei
Charles Boustany
Rick Crawford
Ron Barber
Mike Conaway
Nick Rahall
Duncan Hunter
Jim Jordan
Cory Gardner
Sean Duffy
Jack Kingston
Tom Cotton
Tim Huelskamp
Scott DesJarlais
Marsha Blackburn
Lynn
Westmoreland

Lynn Jenkins
Steve Womack
Tim Griffin
Paul Gosar
Rob Woodall
Michele Bachmann
Austin Scott
Phil Gingrey
Tim Murphy
Sanford Bishop
Rich Nugent
Tom Rice
Martha Roby
David Schweikert
Don Young (AL)
Jim Renacci
Doug Collins (GA)
Doug Lamborn
John Barrow
Andy Barr
Mike Pompeo
Tom Petri
Tim Walz
Charlie Dent
Chuck Fleischmann
Steve Stockman
Frank Lucas
Chris Collins (NY)
William L. Enyart
Kristen Sinema
Scott Tipton
Thomas Massie
Mark Sanford
Brad Wenstrup
Ruben Hinojosa
Randy Neugebauer
Mike Coffman
Luke Messer
Richard Hudson
Jeff Duncan
John Kline
Larry Bucshon
Ron DeSantis
Adrian Smith

Todd Rokita
Todd Young
Glenn Thompson
Robert Hurt
G. K. Butterfield
Joe Wilson
Kurt Schrader
Randy Weber
Tom Marino
Chris Gibson
Brett Guthrie

Vern Buchanan
Terri Sewell
Raúl Labrador
Mike Simpson
Susan Brooks
Devin Nunes
Rodney Davis
Trey Gowdy
Bradley Byrne
Chris Stewart
Cedric L.
Richmond
Danny Davis
Tom Latham
Wm. Lacy Clay
Filemon Vila
Emanuel Cleaver
Renee Ellmers
Joyce Beatty
Virginia Foxx
Steve Chabot
Mike Turner
John Shimkus
Randy Forbes
Marlin Stutzman

Congress of the United States
Washington, DC 20515

May 22, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

We are writing to request that the Environmental Protection Agency provide a sufficiently long comment period on its upcoming regulation of greenhouse gases from existing power plants. The Agency should provide at least a 120 day comment period, given the significant impact this rule could have on our nation's electricity providers and consumers, on jobs in communities that have existing coal-based power plants, and on the economy as a whole.

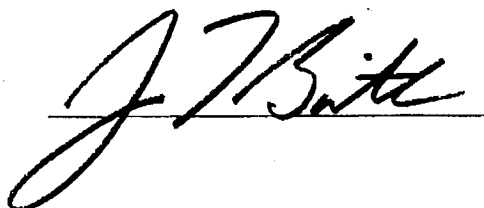
The upcoming proposal will necessarily be more complex for the industry to deal with than the proposal for new plants, and stakeholders will need time to analyze the rule and determine its impact on individual power plants and on the electric system as a whole. This analysis will be no small undertaking, especially since this will be the first ever regulation of greenhouse gases from existing power plants. Additionally, since the EPA extended the original 60 day comment period for the new plant proposal, it makes sense to provide at least the same timeline for the existing plant rule.

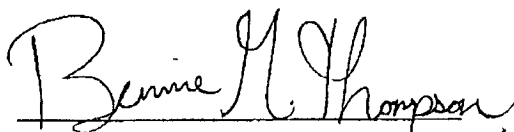
Affordable and reliable electricity is essential to the quality of life to our constituents. While we can all agree that clean air is important, EPA has an obligation to understand the impacts that regulations have on all segments of society. As one step toward fulfilling this obligation, we urge you to provide for a comment period of at least 120 days on the forthcoming new source performance standards for existing coal-based power plants.

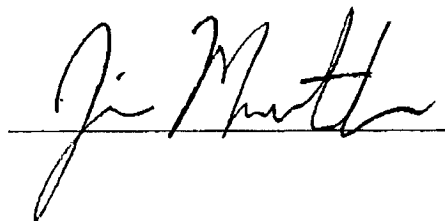
Thank you for your consideration of this request.

Sincerely,









Robert Adenholz

De Yung

Jim Matheson
CPL

Mark R. Shuman

Suzanne Brooks

Kyle S. Jr

Ron Barber

Mac J. Lundy

John Barrow

Shane R. Pettin

Rodney Davis

Raul R. Labrador

Trey Gowdy

Jenni Sewell

Darin Noma

Andre Brucke

No 777

Alan Wagner

Jackie Walveski

K. M. Long

Nickie M. Fortye

Hy Cullen

Frankie Banks

Tim Walberg

Paul Ben

John Kline

~~Bob [unclear]~~

Mike Colman

Q. W. Dutt

Sam Cole

Tim Peters

Chris Cullens

Markwayne Mullin

J. Magnifico

Jayong

A. Bucher IN-08

Paul Webster

Chui Buxton

Eric Evers

Vicky Hartman

Rita Ayer

Conrad Mylon

Christi Noem^(SD)

Jim Hax

J.P. Cing

Mike Hake

Tri Allen

Midland

Win Zempert

Bob Woodall

Sam

Keith Little

Jeff Fortenberry

Jim Jackson

Orlene Black

Steve Loeback

Billy Long

Ed Palmiter

Sam Lee

Alan Ford

C.W. Bonstetter

Andy Bone

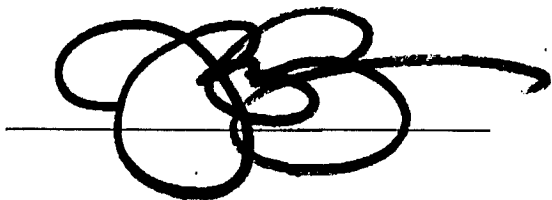
Alfred Lee Ford

Randy K. Weller

Quaker Scott

Tad S. Geko

Oliver GT Thompson
Hunt



J. L. Z

Bill Gray M.C.

D. C. All

Kim Schneider

Don Benishke

W. J. Pomeroy

Tom Huelstberg

Thomas Biese

Robert Luttinger

Mike Simpson

J L L IL-15

Joe Wilber

Rubin Hengora

Ken Terry NE-2

M. K. M.

Don P. Jew

Don D. H. H.

Bill Huizenga

Ch. K.

Frank R. W. W.

Steve W. W.

Mr. J. A. J.

Lynne Jenkins

Ken Crum

W. J. W.

Pat Tiller

J. Rody Forbes

Van Buren

James B. Buren

Michael B. Buren

Scott Garrett

St. Chabot

Wm. Lacy Clay

Butterfield

Willie P. P.

Howard Coble

Samuel H. Davis

Adrian Smith

Tom S. S.

Virginia Fox

Everett P.

Steve King

Amford D. Bishop Jr.

Gene Green

Steve Chaffetz

Doug Lamborn

Denny

Richard Buchanan

Lynn A. Woolh

Steve Pearce

Blaine Luetken

Sen. M. B. B. B.

Mike Rahall

Frank D. Lucas

Jack Kingston

Shelley Moore Capito

Walter B. Jones

Tim Wirth

Rob Bell

Long Adams

Steve Di

Angela

Chris

Mike Kozak

Ch Stewart

Brett Hathorn

Tom Mann

Joyce Beatty

Jackie Walveski

Renee Elie

Fah Vele

Hath Pether

Paul A. Ghar

John Messer

Jeff Durr

Shirley Peery

Cynthia D. Lummis

June V. Amos

Martha Bloom

Constance Hunt

Scott R. Tipton

Tim Beath

Al G. Orr

Odd Pedersen

Chuck Flinn

Steve Rizzo

Y. K. Kilgaff

BA Bick

Gregg Harper

Jeff Miller

Ann Sch

Tom Rice

Nick Sauer

John F. Mallego

Martha Robey

Tom Graves

Tam Cotto

David P. Poe

Randy Huley

Thomas Massie

Michael P. G. AL-3

Richard Hudson

M. M. M.

TN-04

David B. M. T. C.

Chad Langley

John J. Dunsage.

BARBARA BOXER
CALIFORNIA

U.S. SENATE
OFFICE OF THE CLERK
SEN. BARBARA BOXER
100 SENATE CLERK
WASHINGTON, DC 20510
202-224-2352
http://www.senate.gov

United States Senate

U.S. SENATE OFFICE BUILDING
SUITE 112
WASHINGTON, DC 20510-1206
(202) 224-2352
<http://www.senate.gov>

June 18, 2014

Ms. Laura Vaught
Associate Administrator for Congressional and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue NW Room 3426 Am
Washington, DC 20460-0001

Dear Ms. Vaught:

Enclosed, please find a copy of the correspondence Senator Boxer received from Ms. Jennifer deNicola regarding the Environmental Protection Agency's enforcement of the Toxic Substances Control Act at schools in the Santa Monica Malibu Unified School District.

I am forwarding the attached for your review and consideration. Any information you can provide in response to the concerns expressed by Ms. deNicola will be most appreciated.

Thank you for your assistance in this matter. Please respond to Senator Boxer's Oakland office, attention: Madeline Peare.

Sincerely,

Eric José Vizcaino
Director of Constituent Services

EJV:mp
Enclosure
cc: Ms. Jennifer deNicola

100 CONSTITUTION STREET
SUITE 112
WASHINGTON, DC 20510
(202) 224-2352

312 NORTH SPRING STREET
SUITE 112
LOS ANGELES, CA 90012
(213) 994-5900

SUITE 5100
SUITE 7000
SAN RAMON, CA 94583
(925) 397-2727

2000 LARSEN STREET
SUITE 500
PLEASANTON, CA 94566
(925) 497-6100

600 DOW STREET
SUITE 200
SAN DIEGO, CA 92101
(619) 231-1901

1000 LEXINGTON
SUITE 100
SAN FRANCISCO, CA 94103
(415) 774-1000

Jun 09 14 02:11p

Beth

3103174712

p.1

FAX Document

From: Beth Lucas, Malibu Unites

To: Senator Barbara Boxer's Oakland and LA Offices

Oakland fax number: 202-228-6866

LA fax number: 202-224-0357

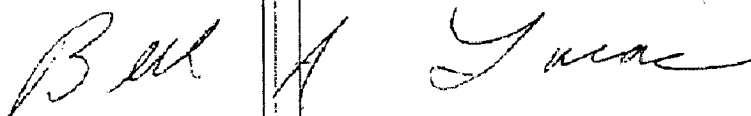
Re: Attached Letter to Senator Barbara Boxer, Regarding Urgent Need for her assistance with the EPA to enforce TSCA Regarding Carcinogens (PCBS) at the Malibu High School Campus.

Please provide this letter to Senator Boxer and any members of her staff who can help with this really terrible contamination issue that is putting our children, teachers and staff at risk. We have lost almost 10 months with little to no progress and TSCA law violations, so time is of the essence, and we have an EPA representative visiting our school on June 20 – see the attached for more details. We urgently need the Senator's help as per the attached letter. Thank you so much for your help and prompt attention to this urgent and time-critical matter.

4 pages to follow.

Please contact Beth Lucas at 310-456-6151 to confirm receipt. (Please note Jennifer DeNicola, Malibu Unites President is the primary contact and all of her contact info is included at the end of the attached letter.)

Thank you!



1 of 5

06/09/2014 5:57PM (GMT-04:00)

Jun 09 14:02:11p

Beth

3103174712

p.2

Monday, June 9, 2014

From: Jennifer deNicola, President, Malibu Unites

To: Senator Barbara Boxer

Re: *Urgent Request for Your Assistance to Direct the EPA to Enforce TSCA
Regarding the Carcinogenic Contamination at Malibu High School, Malibu
Middle School and Juan Cabrillo Elementary School*

Change.org Petition Tops 1200 Signatures – We Need Your Help!

Dear Honorable Senator Barbara Boxer,

This is an urgent follow-up to our letter to you dated April 29, 2014. Attached is a petition asking for your assistance to direct the EPA to test for and remove PCBs from schools.

This letter requests the following:

1. Please direct the EPA to require testing of all PCB sources
2. Please direct immediate removal of all PCB Sources that violate TSCA's 50ppm threshold at Malibu High School
3. Please direct all schools to use precautionary principals to protect student and teacher health
4. Please urge Malibu High School to remove students from any room or building that has violated TSCA until full testing and remediation has taken place
5. Please sponsor Malibu Unites' "Parents Right to Know Law." Parents have a right to know what toxicants have been discovered at their children's school. This law will expand on the premise of Prop 65, which excludes public schools/buildings.

Intro:

As you are aware, Malibu High School, Malibu Middle School and Juan Cabrillo Elementary School have been dealing with PCBs and pesticides at levels that presented "an unacceptable health risk" since at least 2009 and probably much longer. Because PCBs have been found in window caulk in excess of 50ppm, our school is now under EPA regulation for violation of TSCA. We are having issues with the EPA's method of enforcing TSCA and request your swift assistance to protect our children. As a reminder: three Malibu Middle School teachers were diagnosed with thyroid cancer within four months of each other. Ten others at the school have thyroid disease and many children have complained about health issues as well, in particular, asthma and migraines. The three teachers diagnosed with thyroid cancer currently occupy the classrooms that have tested the highest for PCBs.

205

06/09/2014 5:57PM (GMT-04:00)

Jun 09 14 02:12p

Beth

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p.3

History:

- a. In October 2013, the Santa Monica Malibu Unified School District (SMMUSD) staff moved students and teachers from buildings suspected of PCBs and other toxicants. This occurred when parents and teachers learned that 1,100 tons of contaminated soil had been removed from the middle of campus in the summer of 2011, during summer school session.
- b. In November 2013, a small sample of classrooms in these buildings were tested only for PCBs and violated TSCA.
- c. In December 2013, SMMUSD told teachers that they should go back to the vacated classrooms after winter break yet before full and complete testing and remediation occurred. Some teachers refused. A few went back without informing parents that their children would be back in rooms with PCBs.
- d. It is now June 2014. There has been no further testing and no remediation. There is no approved plan in place to test or remove PCBs. Recommendations from the EPA have not been implemented for Best Management Practices (BMP) cleaning (special note: The EPA has not data to prove that BMP is effective in reducing PCB exposure, yet the EPA is suggesting BMP as a remediation tool)
- e. Environ Environmental Corporation, the private environmental firm hired by SMMUSD, took three months to submit a plan to the EPA. Just last week this plan was rejected by the EPA because it did not address PCBs properly nor did it address current TSCA violations.
- f. Because of the school district's lack of direction to Environ to fully test and remove PCBs, and Environ's lack of experience in handling PCBs in schools, this process has taken six months longer than expected. Now testing and remediation will not occur this summer and before the next school year begins, exposing children and staff to PCBs for yet another school year. *This is unacceptable and we need your help!*

We request your urgent assistance at Malibu High School to:

1. Direct the EPA to enforce TSCA Law. PCBs over 50ppm have been found in the small sample of rooms tested. We ask you direct the EPA to require full and comprehensive testing of PCB sources (caulking and other building material), and not rely just on air and wipe samples (which will not solve the PCB problem), throughout MHS and Juan Cabrillo campuses in buildings constructed or renovated between 1950 and 1980.
2. Direct the SMMUSD to identify and test building materials swiftly and comprehensively this summer, prior to the beginning of the next school year (start date Aug 19, 2014) and to ensure a proper remediation plan is required and implemented in a timely manner.
3. If #2 cannot be completed before Aug 19, 2014: Relocate students and teachers from buildings that violate TSCA until full testing to determine the extent of the contamination and remediation has been completed. Temporary classrooms

3 of 5

Jun 09 14:02:12p

Beth

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p 4

should be ordered for August for all middle school students and teachers to avoid further exposure in classrooms where the initial violations occurred. Informing parents now of temporary classrooms will prevent a mass exodus from enrollment in August.

Change.org Petition to Remove Cancer Causing PCBs From Our Schools

Shortly after sending you our letter dated April 29, Malibu Unites launched a Change.org petition asking for your swift assistance to direct the EPA to enforce the law as we have noted in the list above.

In a few weeks we have obtained more than 1,200 signatures. The petition supporters are from Malibu, across the country and throughout the world.

Your constituents in Malibu are angry, frightened, horrified, and in disbelief that the school district and the EPA are not putting our children's health above all else, not being precautionary while fixing this problem, are moving so slowly to remedy this issue, that they have not conducted thorough testing to date, that they have spent hundreds of thousands of taxpayer dollars on lawyers to protect their liability but not their students, and that they continue to put our children, teachers and staff at risk. *We urgently need you use your elected office to help change this.*

For your reference, enclosed is a copy of the petition signatures and a sampling of some of the comments. Please take some time to read these; some of them are heart wrenching.

Request for a meeting and/or site visit

The entire past school year has been wasted while the district has focused on its agenda of protecting its own liability while our children, teachers and staff have been put at unnecessary risk. The district has spent hundreds of thousands of dollars on lawyers rather than testing properly.

MHS parents and members of Malibu Unites have tried to reason with the district and the EPA, with little result. We now desperately need your help to direct the EPA and District to do what more than 1,200 people have so clearly stated: remove PCBs from the schools and protect our children. We request an in-person meeting with you at your earliest convenience and, if possible, a conference call on or before June 19, 2014 because on June 20, 2014, Jared Blumenfeld, EPA Region 9 Administrator, is scheduled to meet with Malibu Unites and do a "toxic tour" of the school.

We understand you are extremely busy and your time is precious. But our children's, teachers' and staff's health is also precious. Without your urgent help and intervention, based on events of the past ten months we are concerned that

4 of 5

06/09/2014 5:57PM (GMT-04:00)

Jun 09 14:02:12p

Beth

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p.5

appropriate actions will not otherwise be taken in a timely manner. This is an opportunity to have a broad, life-changing impact on how this PCB issue is handled by the EPA and the school district to protect our children in Malibu, across California, and throughout the country.

"All Children Deserve a Healthy Environment" – U.S. EPA (website)

Please contact me to set up a meeting.

Thank you for your assistance with this time sensitive, critical issue.

Respectfully Yours,

Jennifer deNicola
Malibu Unites, President
310-848-5400
jen@malibuunites.com

www.MalibuUnites.com

Sign Our Petition to Remove Cancer Causing PCBs from Schools <http://goo.gl/sKR30F>

SotS

06/09/2014 5:57PM (GMT-04:00)

Eades, Cassaundra

From: Haman, Patricia
Sent: Monday, June 30, 2014 10:33 AM
To: Mims, Kathy; Eades, Cassaundra
Cc: Lewis, Josh
Subject: Fw: Letter on winter barley as an advanced biofuel
Attachments: 6-30MD EPA delegation letter winter barley.pdf

From Laura. Thanks!

From: Vaught, Laura
Sent: Monday, June 30, 2014 10:30:38 AM
To: Haman, Patricia; Lewis, Josh
Cc: Distefano, Nichole
Subject: Fw: Letter on winter barley as an advanced biofuel

New letter for system.

From: Mahr, Tom <Tom.Mahr@mail.house.gov>
Sent: Monday, June 30, 2014 10:28:41 AM
To: Vaught, Laura
Subject: Letter on winter barley as an advanced biofuel

Laura – Mary Frances gave me your name. Please find attached a pdf copy of a Maryland delegation letter to the Administrator urging that ethanol produced from winter barley be considered an advanced biofuel. A hard copy is being put in the mail today.

Tom Mahr
Policy Director
Office of the Democratic Whip

Congress of the United States
Washington, DC 20515

June 30, 2014

The Honorable Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave
Washington, DC 20460

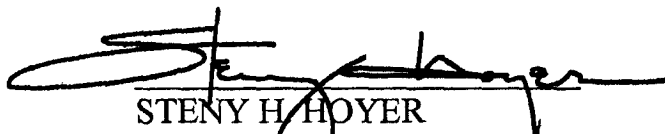
Dear Administrator McCarthy:

We write to encourage you to seriously consider approving ethanol produced from winter barley as an advanced biofuel. Barley is grown in the Chesapeake Bay region as a winter cover crop. It is planted in the fall after corn or soybeans to use any remaining nutrients from the previous crop, helping to prevent nutrient runoff into the Chesapeake Bay. With an ethanol plant in Hopewell, Virginia, expected to begin operation later this year, a determination that winter barley-to-ethanol is an advanced biofuel would help develop a new domestic fuel source, improve water quality, and generate economic benefits for Maryland's agricultural economy by creating a market for this highly effective winter cover crop.

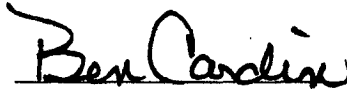
For nearly two decades, Maryland grain farmers have provided financial support to small grains experts at Virginia Tech to develop barley cultivars with improved biofuel related traits. We understand that spring barley may not meet the standards for advanced biofuels, so we encourage you to consider winter barley separately. Approval of winter barley as an advanced biofuel would help diversify the operation of the Hopewell plant and contribute to its success in producing alternative fuels.

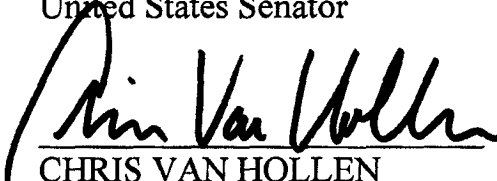
With environmental advantages as a biofuel feedstock and side benefits for Chesapeake Bay revitalization efforts, we believe EPA should have a strong interest in finalizing the status review of winter barley for ethanol.

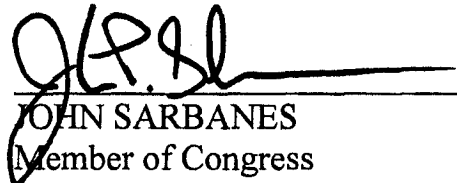
Sincerely,



STENY H. HOYER
Member of Congress


BARBARA MIKULSKI
United States Senator


BENJAMIN L. CARDIN
United States Senator

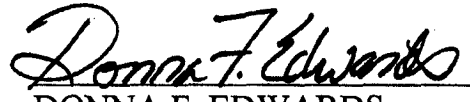

CHRIS VAN HOLLEN
Member of Congress

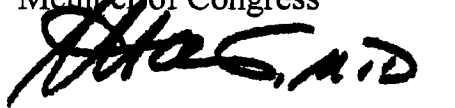

JOHN SARBANES
Member of Congress


JOHN DELANEY
Member of Congress


ELIJAH CUMMINGS
Member of Congress


C.A. DUTCH RUPPERSBERGER
Member of Congress


DONNA F. EDWARDS
Member of Congress


ANDY HARRIS
Member of Congress

United States Senate
Washington, DC 20510-2004

June 24, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

We are writing today to urge you to include consideration of a bicycle and pedestrian component as part of the NEPA process on the Amtrak Susquehanna River Bridge.

Currently, Marylanders have no safe way to cross the Susquehanna River on foot or on bicycle, making the river the largest non-motorized gap on the Atlantic seaboard. This gap is an obstacle in Maryland's long term plans for enhancing non-motorized transportation in the state. A bicycle/pedestrian bridge over the Susquehanna would be a boon to local recreation as well as an economic opportunity.

The Susquehanna Safe Crossing Coalition, comprised of a number of groups supporting bicycling and pedestrian opportunities locally and nationwide, has identified the upcoming NEPA process on the replacement or upgrade of Amtrak's Susquehanna River bridge as an excellent opportunity to fill this need. A pedestrian and bicycle crossing here would connect the communities of Havre de Grace and Perryville, as well as serve as a connection for several major trails in the area, including the East Coast Greenway running 2,900 miles through the Eastern Seaboard. Amtrak has expressed willingness to include bicycle and pedestrian access to their plans for the Susquehanna Bridge.

I respectfully ask that you give all due consideration to this request, in accordance with established policies and procedures. Thank you very much.

Sincerely,



Barbara A. Mikulski
United States Senator



Benjamin L. Cardin
United States Senator

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COMMITTEE ON ENERGY AND COMMERCE

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Majority (202) 225-2927
Minority (202) 225-3641

July 15, 2014

The Honorable Jim Jones
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Assistant Administrator Jones:

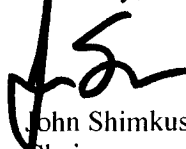
Thank you for appearing before the Subcommittee on Environment and the Economy on Tuesday, April 29, 2014, to testify at the hearing on the discussion draft entitled the "Chemicals in Commerce Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Tuesday, July 29, 2014. Your responses should be mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to Nick.Abraham@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus
Chairman

Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment

The Honorable Henry A. Waxman

Despite testimony over the past seven hearings on TSCA that the new chemicals program under current law has largely been a success, the revised draft implements a number of substantial changes to this program. These include new exemptions for articles and byproducts, as well as a new analytical standard under which EPA must determine whether or not regulation “is warranted.” The purpose and effects of these changes are not clear.

1. Do other laws implemented by EPA require determinations of whether regulation “is warranted?” If so, has that standard been interpreted in the past as requiring a cost-benefit analysis? Has the “is warranted” standard posed any difficulties for implementation?

In your written testimony, you suggested that these new changes would have an adverse effect on the new chemicals program, weakening current law.

For instance, you state that EPA’s risk management authorities for new chemicals under the discussion draft would be weaker than those in current TSCA.

2. Please explain this concern in detail.

The draft also weakens current law with respect to EPA’s ability to respond where there is insufficient information. Under current law, when EPA receives a PMN for a new chemical and finds that there is insufficient information to evaluate the chemical’s risks, EPA has a number of options, including requiring the development and submission of test data pursuant to section 4. The draft would curtail some of these authorities.

3. What steps would EPA have to take under the revised draft to obtain the information needed for new chemical reviews?
4. Would these steps take additional time and/or resources, compared to the current process, and if so, what effects could that have?

There has been consensus among a broad group of stakeholders that chemicals should be held to a risk-based safety standard under a reformed TSCA. This has been part of EPA’s principles for TSCA reform since 2009. You testified that the standard in the discussion draft is a “risk/cost balancing” standard similar to what exists under current law and that it “does not align with the approach delineated in [EPA’s] principles.”

At the same time, you testified that EPA needs to have the flexibility to consider costs in risk management.

5. In EPA’s view, should costs of risk management options play a role in determining whether or not a chemical meets a risk-based standard?
6. In EPA’s view, should the Agency have discretion to consider costs in choosing among available risk-management options that would be adequate to bring a chemical into compliance with a risk-based standard?

The Honorable John D. Dingell

1. In 1976 I submitted report language in regard to weaknesses that exist in the current Toxic Substances Controlled Act. I stated it was essential for the protection of public health and the environment that EPA

have a firm mandate for a comprehensive approach to protection from hazards due to chemical substances. And, that such a success could only be achieved through legislative directives and adequate funding support. Mr. Jones, you state in your testimony that, in order to be successful, EPA must have the resources it needs to protect the American people from exposure to harmful chemicals.

- a. Under CICA, does EPA have the appropriate resources to quickly and efficiently implement the various framework, process, criteria, and guidance provisions which must be in place prior to EPA beginning action on specific chemicals?
 - b. Under CICA, once EPA is able to take action on a specific chemical, does EPA have the resources needed to quickly and efficiently determine prioritizations, assessments, determinations, and risk managements?
2. EPA has over 84,000 chemicals listed on its TSCA inventory, and little over 200 have been acted on in 37 years. EPA has identified an initial work plan of chemicals for assessment which includes 83 substances, in addition to identifying several hundred chemicals on the Safer Chemicals Ingredients List.
 - a. Under current TSCA, does EPA have the appropriate resources to complete more than 20 risk assessments per year on existing chemicals? Please answer yes or no.
 - b. What kind of resources would EPA need in order to perform 10 to 20 more additional risk assessments per year?
3. As you know, I have the privilege to live in the Great Lakes region, home to 20 percent of the world's fresh water supply as well as tremendous hunting and fishing areas. Many of my constituents have voiced concerns that CICA does not ensure adequate public health and safety standards needed for high-risk toxic chemical contamination found in this region.
 - a. Would EPA be better able to regulate new and existing chemicals if they were granted the authority to set priorities for conducting safety reviews based on relevant risk and exposure conditions?
 - b. If both chemical manufacturers and EPA had the ability to asses and act on priority chemicals like those potentially found in the Great Lakes, would EPA be better able to regulate those chemicals in a timely manner?

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA FORBES, MAJORITY STAFF DIRECTOR
ZAK BARR, REPUBLICAN STAFF DIRECTOR

March 5, 2014

Chris Grundler
Director, Office of Transportation and Air Quality
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

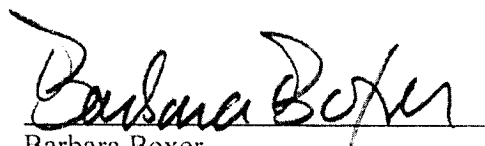
Dear Director Grundler:


Thank you for appearing before the Committee on Environment and Public Works on December 11, 2013, at the hearing entitled, "Oversight Hearing on Domestic Renewable Fuels." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

Enclosed are questions for you that have been submitted by Senators Boxer, Baucus, Carper, Cardin, Gillibrand, Vitter, Wicker, and Fischer for the hearing record. Please submit your answers to these questions by COB March 19, 2014, to the attention of Mara Stark-Alcalá, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to Mara_Stark-Alcala@epw.senate.gov. To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Joe Mendelson of the Majority Staff at (202) 224-8832, or Margaret Caravelli of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,


Barbara Boxer
Chairman


David Vitter
Ranking Member

**Environment and Public Works Committee Hearing
December 11, 2013
Follow-Up Questions for Written Submission**

Questions for Grundler

Questions from:

Senator Barbara Boxer

1. The Renewable Fuel Standard was designed, in part, to incent infrastructure investments in renewable fuels use by creating a stable and expanding market for such fuels. How will EPA's Proposed 2014 Volume Standards incentivize expanded renewable fuels infrastructure in the U.S.?
2. Can you please explain the specific steps the EPA has taken to address individual cases of RIN fraud? What agency's actions have been taken to prevent future cases of RIN fraud?

Senator Max Baucus

1. Did EPA review the change in market conditions for the oil sector or the renewable fuel sector if your proposed 2014 blending targets were to be adopted? What are the results of these analyses?
2. How do you believe your proposed 2014 blending targets will affect the status of infrastructure investments to deliver renewable fuels?
3. How does EPA analyze the effects of the interaction between its annual blending targets, review and approval of new feedstock pathways, and other complementary federal programs such as loans, loan guarantees, and grants from the Departments of Energy and Agriculture?
4. What has EPA done to address individual cases of RIN fraud and other potential manipulation in the RIN market as well as what systemic steps you have taken to address these issues?
5. Is it legal to use E15 in a motorcycle?

Senator Thomas R. Carper

1. Mr. Grundler, can you tell the Committee what the EPA has done to increase transparency in the RIN markets? Does the EPA intend to do more? Are there tools that could help the agency increase transparency that are not legally available to you now?
2. Mr. Grundler, under EPA's analysis in the recent 2014 proposed rule, the EPA has determined there is not the available infrastructure to handle the increased levels of biofuels required under the Clean Air Act. If the EPA adjusts the RFS downward to meet the current infrastructure, what drives new investments in infrastructure to handle future volume requirements? Can you tell the Committee, how does this nation get past the blendwall under the current proposal? How can this country incentivize the increased investments in E85 pumps, E15 pumps and vehicles that are optimized for future ethanol blends?
3. Currently, car companies are starting to make adjustments to meet Tier 3 emissions standards. Can you tell the Committee if the EPA is working with industry to incentivize the production of vehicles that can run on future ethanol blends? If not, why not?
4. Many small and mid-range refineries do not have the capabilities to blend and must buy many or all of their RINs on the market. As a result, high and volatile RIN prices have had a large impact on these refineries. As the RFS continues, what can be done – if anything - to assist these smaller refineries?
5. Do you believe your proposal will impact future advanced biofuel investments – if not, why not?

Senator Benjamin L. Cardin

1. Are the challenges of the blend wall the primary driver behind the proposed reduction in 2014 RVO (renewable volume obligations)?
 - a. Is ethanol the fuel additive that causes blend wall problems?
 - b. Do biodiesel and advanced "drop-in" biofuels contribute to the blend wall problems?
2. Since the advanced biofuel industry generated 3.2 billion gallons worth of RINs in 2013 and most of these fuels do not contribute to the blend wall problem, why is EPA proposing to reduce the advanced biofuel volumes for 2014 to 2.2 billion gallons?
3. Could you explain how the Monte Carlo system EPA proposes will reflect the actual gallons being produced?
4. Will the mean you are proposing most likely always under estimate actual production?
5. If biomass based diesel pool produced around 1.7 billion gallons why is EPA proposing the mandates to be kept at 1.28 for both 2014 and 2015?
6. Why has EPA been struggled over the last several years in moving new pathways for biofuels as well as updating the general rules governing the biofuels industry?
7. What happens to the proposed cellulosic mandate for 2014 if EPA completes its Pathways Two Rule after you announce the RVOs?
 - a. Won't millions of gallons have been added that are known to be coming but are not included in the target?
8. What consideration is EPA giving to the negative market signals to advanced biofuel industry investment community that may result from the proposed reductions to the advanced biofuel volumes for 2014?
9. If the blend wall is the primary driver for the proposed RVO, why is EPA cutting 40% for Advanced Biofuels off the 2007 statutory requirement and less than 10% for corn ethanol?
10. Is the conventional ethanol sectors now mature enough at the E10 blend wall to no longer need the artificial support of a RFS mandate?
11. Why doesn't the EISA waiver process (Section 211(o)(7)(B)) need to be amended to better protect livestock and poultry producers by having hard triggers on feedstock supplies and prices?
12. What guarantees can EPA provide consumers who own and operate lawnmowers, generators, boats and cars that they will not mis-fuel?
13. As the statute requires increased volumes of ethanol in the fuel supply, what guarantees will consumers have that they will be able to purchase E0 and E10 at an affordable price?
14. Do you feel that a label simply notifying the consumer of an E15 pump, a label that doesn't even warn of the potential hazards of misfueling, provides the adequate assurances against misfueling?

15. If the majority of ethanol plants are failing to achieve the greenhouse gas reduction for ethanol, how confident are you that the industry will meet future greenhouse gas reduction requirements?
16. By your assessment, has the body of scientific work published since 2005 indicated that the overall environmental and human health impacts of corn ethanol are now more significant and widespread than previously thought?

Senator Kirsten E. Gillibrand

1. Currently, the USDA provides resources and support for biofuel infrastructure and development through programs like the Biomass Crop Assistance Program (BCAP). For 2014, EPA has proposed lower renewable volume obligations for refiners and importers of petroleum based gasoline or diesel fuel despite the production of more biofuel than originally anticipated. Can you explain the impact that this reduction will have on advanced biofuel production activities funded by BCAP and on rural economies?
2. Eleven States and the City of New York have implemented or proposed using more biodiesel for all diesel fuel and/or heating oil sold in those regions. This increased demand for biodiesel suggests an expanding market for biodiesel producers. Why then is the 2014 proposed biodiesel production target set below the projected 1.28 billion gallon production estimate for 2014? How will this proposed reduction impact the emerging biodiesel market in New York State and New York City?

Senator David Vitter

1. The Energy Information Administration estimated the following for U.S. consumption of ethanol: 12.9 billion gallons in 2010, 12.9 billion gallons in 2011, and 12.9 billion gallons in 2012. It may be around 13 billion gallons for 2013. Given your Agency's 2014 proposed RVO, what is EPA's projection of ethanol consumption in 2014?
2. Does EPA's proposed 2014 RVO actually cut corn ethanol consumption from where we are this year (2013)?
3. Please describe EPA's authority to reduce the advanced mandate by the amount of the cellulosic mandate and why EPA decided to exercise that authority in the proposed 2014 RVO.
4. Please describe how EPA concluded that the blend wall exists.
5. If EPA were to promulgate increased volumes (higher values) for ethanol in 2014 (closer to statutory levels), how much E85 would be necessary to achieve such blending requirements? How much E85 is currently being used?
6. Since July of 2010 EPA recorded the price of every RIN transaction. How does that square with comments that RINs are really free? Are RINs really free?
7. Was EPA's E15 testing protocol specifically designed to test more than the emissions control system on MY2001 cars, or were the parameters limited to the emissions control device with only observations on the rest of the car?
8. Why were the 2013 and 2014 rules so late? What measures are being taken to ensure the rules come out on time in future years?
9. Does EPA have an estimate for the total cellulosic capacity under construction? Does EPA have an estimate for the total other advanced (non-biomass based diesel/non-cellulosic) capacity under construction?
10. Please describe the key assumptions behind the Monte Carlo analysis used for the proposed 2014 RVO and in particular the cellulosic numbers. Why is this process more accurate, particularly when considering the production numbers for 2013 and the fact that the cellulosic industry is on track to reach only 11% of the target set in August?
11. In California, due to the state's Low Carbon Fuel Standard, Brazilian ethanol is a primary compliance mechanism. What impact will your rule have on California's Low Carbon Fuel Standard?
12. During EPA Administrator Gina McCarthy's nomination process, she was asked if EPA was considering or had plans to establish a Low Carbon Fuels Standard and the response was negative. Is that still the case?

Senator Roger F. Wicker

- 1. Despite the fact that ethanol cannot be added to diesel fuel – and biodiesel cannot be added at more than 5% - the total renewable volume obligation for refiners includes both their gasoline and diesel production. Has the EPA considered how this disproportionately affects refiners who produce more diesel than gasoline?**
- 2. Studies conclude that gasoline with 15 percent ethanol, or E15, can cause premature engine damage and reduce fuel efficiency. A number of auto manufacturers have already said warranty coverage would not apply to vehicle damage resulting from gasoline with the higher blend of ethanol. What are the risks of expanded use of E-15 to automakers and gasoline-using equipment?**
- 3. Can you please comment on whether EPA has considered the significant volatility in the grain markets caused by the renewable fuel mandates, specifically addressing corn prices?**

Senator Deb Fischer

1. Until the Agency issued its proposed rule establishing 2014 Renewable Volume Obligations under the RFS, EPA's consistent and carefully balanced implementation of the RFS has previously provided cellulosic and advanced biofuel developers and investors with the confidence that if they can produce these biofuels, there will be a market for them. This has helped biofuel producers overcome the challenges in meeting production goals due to innovation scale-up and perfecting first-of-a-kind technology. I have heard from advanced biofuel producers who say that your proposal breaks the fundamentals of the RFS by eliminating the certainty around the market for their product. Given this, where do you see the industry going in the next few years given the devastating impact that the Agency's proposed rule would have on the sector if adopted? Please explain the most important mechanism you see in your proposed rule that will continue to drive investment in the advanced biofuels space.
2. Due to regulatory delays within EPA, a number of producers and investors continue to wait for evaluation and approval of their RFS feedstock pathways. This in turn prevents from scaling up to commercial production of cellulosic and advanced biofuels.
 - a. Is EPA on track with its approval of enough diverse feedstock pathways to ensure that producers from all regions of the country can help us meet our RFS goals?
 - b. How many pathways has the Agency approved, and what is the average length of time it takes for a new applicant to receive approval?
 - c. How can EPA expedite additional pathway approval in the near future, so U.S. companies can continue to deploy innovative technologies and produce the additional volumes necessary to meet our cellulosic and advanced biofuel volume goals?
3. What steps has EPA taken to address RIN fraud?

HAROLD ROGERS
5TH DISTRICT, KENTUCKY

COMMITTEE ON APPROPRIATIONS
CHAIRMAN



Congress of the United States
House of Representatives
Washington, DC 20515-1705
July 24, 2014

PLEASE RESPOND TO:

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☐ 48 SOUTH KENTUCKY HIGHWAY 15
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(606) 439-0794

☐ 110 RESOURCE COURT
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PRESTONSBURG, KY 41653
(606) 886-0844

The Honorable Gina McCarthy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

The United States increasingly depends on the compost industry as a component of solid waste management programs. We are concerned that the viability of the composting industry may be threatened by the use of persistent herbicides, a new class of herbicides used to control broadleaf weeds. These herbicides do not break down during composting which causes the compost to be toxic to plants such as vegetables and ornamental plants. Since persistent herbicides do not degrade they follow the plant to which they are applied throughout the lifecycle.

We have heard from several constituents in the composting industry who have expressed their concern that the presence of these persistent herbicides taint their compost product and can harm create hardships for Kentucky's agricultural and equine industries. As the "Horse Capital of the World," Kentucky is home to 320,000 horses. The disposal of manure and bedding is of special concern considering one horse produces 9.1 tons of manure per year. If persistent herbicides are applied to hay, the residue may remain for several months to years. Horses then eat the hay and if the manure is composted, the toxic herbicides persist.

Composting is a practical solution for waste management. If horse farms are unable to cheaply and efficiently remove horse manure, this will have serious economic and environmental impacts, as compost facilities refuse to take horse manure and the potential for water contamination.

As your agency reviews the re-registration of Picloram, Clopyralid, and Aminopyralid under FIFRA, we hope the agency will consider the impact these products have on a wide range of industries and require them to break down in the composting process.

Sincerely,

ANDY BARR
Member of Congress

HAROLD ROGERS
Member of Congress

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

July 31, 2014

Mike Shapiro
Principle Deputy Assistant Administrator
Office of Water, U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Dear Mr. Shapiro:

Thank you for appearing before the Committee on Environment and Public Works, Subcommittee on Water and Wildlife's legislative hearing on July 16, 2014. We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

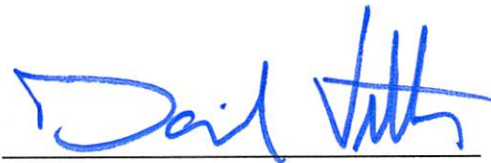
Enclosed are questions for you that have been submitted by Senator Vitter for the hearing record. Please submit your answers to these questions by COB August 14, 2014, to the attention of Drew Kramer, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to Drew_Kramer@epw.senate.gov. To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Jason Albritton of the Majority Staff at (202) 224-8832, or Chris Tomassi of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,



Barbara Boxer
Chairman



David Vitter
Ranking Member

Environment and Public Works Committee Hearing
July 16, 2014
Follow-Up Questions for Written Submission

Questions for Shapiro

Questions from:

Senator David Vitter

1. S. 571, the Great Lakes Water Protection Act, would prohibit publicly owned treatment works (POTW) from blending partially and fully treated wastewater during wet weather events, except in limited circumstances. Can you please explain how this prohibition would affect and impact POTW's which are currently permitted to blend? What costs would local communities incur if they are no longer able to use blending to manage wet weather events?

BARBARA BOXER
CALIFORNIA

COMMITTEES:
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AND TRANSPORTATION
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United States Senate

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July 29, 2014

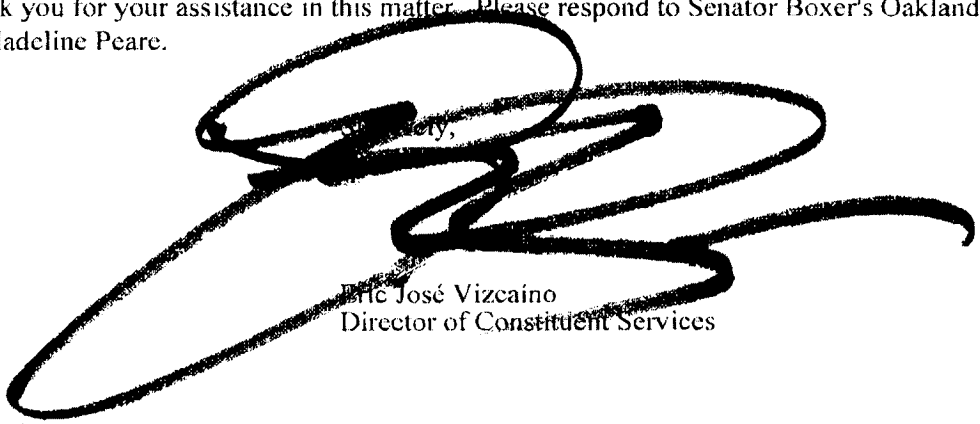
Ms. Laura Vaught
Associate Administrator for Congressional and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue NW Room 3426 Arn
Washington, DC 20460-0001

Dear Ms. Vaught:

Enclosed, please find a copy of the correspondence Senator Boxer received from Ms. Jennifer Chu regarding a matter pertaining to the decision of the Environmental Protection Agency to discontinue support of the Healthy Environments Child Development Center in San Francisco, California.

I am forwarding the attached for your review and consideration. Any information you can provide in response to the concerns expressed by Ms. Chu will be most appreciated.

Thank you for your assistance in this matter. Please respond to Senator Boxer's Oakland office, attention: Madeline Peare.


Eric José Vizcaino
Director of Constituent Services

EJV:mp
Enclosure
cc: Ms. Jennifer Chu

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(951) 684-4840

(b) (6)

Date: June 23, 2014

Office of U.S. Senator Barbara Boxer
70 Washington Street, Suite 203
Oakland, CA 94607
Fax: (202) 224-0454

Dear Senator Boxer:

I am a federal government employee at HUD and am writing to protest the impending closure of the federally funded Healthy Environments Child Development Center ("Healthy Environments") located in the EPA building in San Francisco (currently located at 95 Hawthorne Street in SOMA). When we enrolled our then-5 month old baby at this child care facility it was with the understanding that the EPA had plans drawn up to move the childcare facility to 75 Hawthorne when their buildout was complete. The plans were even disseminated to the parents for their perusal. We gave up our space at other childcare facilities as we decided that our child would be able to enjoy the continuity of a federal daycare situation that would provide high quality stable care through kindergarten.

Last week, we were informed that the EPA had changed their plans and no longer had plans to include a daycare facility in their buildout and that Healthy Environments would be losing their lease in August 2015. Additionally, the childcare operator ("Bright Horizons") is unable to provide us with any assurances of how long the center will continue to operate given the uncertainty of enrollment, etc. Bright Horizons is not able to secure any replacement space given the extremely tight real estate market here in San Francisco at this time. Given the scarcity of childcare and the typical year-long waiting lists that parents typically have to endure here in San Francisco, the closure of the EPA childcare facility deals yet another blow to the working family (and more specifically, the federal government worker family) in San Francisco. Here we have yet another bellwether of how family-unfriendly both the federal government and the city of San Francisco are becoming. GSA provided the following reason for closing the facility in a FAQ that was circulated to parents of the daycare facility:

Why is GSA dissolving child care sponsorship with Healthy Environments Child Development Center?

The US Environmental Protection Agency (EPA) has notified GSA that EPA can no longer support a child care center due to changing demographics. GSA examined the federal government workforce in the neighborhood surrounding Healthy Environments and found that there is not a sufficient population to support a child care center.

Per the GAO, some 30% of the federal workforce is eligible to retire in the next 3 years, and here at HUD, an even higher percentage are retirement eligible. Who will be taking these government workers' places? Clearly, younger workers will be replacing those who are retiring and they will need services such as daycares. If the federal government is to compete with private sector jobs (especially here in the Bay Area, with such a high cost of living), it will need to compete with family-friendly services such as federally run daycares. To say that **current** demographics do not support a child care center is shortsighted and does not take into account the future of the federal government.

Additionally, it is clear from the waitlists that extend for years here in San Francisco at high quality daycares that there is a huge need in the greater community for child care. In the Bay Area, especially on a government salary, dual-working parent households are the norm, not the exception. Closing Healthy Environments is in direct contravention with the "Working Families Summit" which happened today and which President Obama is supporting. As President Obama mentioned



today, child care "is a basic need." Where are working families to go for quality child care here in the Bay Area if the federal government is in the process of closing down child care centers? I'd urge you to help the EPA reconsider their decision to shut down Healthy Environments in San Francisco. Please help to support federal working families, like mine, here in San Francisco by keeping Healthy Environments open.

Sincerely,

(b) (6)

United States Senate

WASHINGTON, DC 20510

August 12, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460-0001

Dear Ms. McCarthy:

We write to request the status of the ongoing review and the expected timeline for finalizing an agreement between U.S. EPA, Region 3, and Sparrows Point Terminal, LLC, the prospective purchaser of the 3100 acre former Bethlehem Steel & RG Steel property located in Baltimore County, MD.; referred to locally as Sparrow's Point.

It is said of Sparrows Point that the "steel made there built America." While the steel that built our nation's skyscrapers still holds strong, the thousands of jobs that Sparrows Point built for middle-class families in Baltimore disappeared when the mill closed its doors in 2012. Despite losing their livelihoods, our constituents did not lose their sense of community, and remain hopeful that they will soon have an opportunity to get back to work and provide for their families.

We are hopeful that the proposed redevelopment of Sparrows Point will bring back economic vitality to this area, and ensure my constituents a solid economic future. We request the status of the ongoing review related to this project and the expected timeline for finalizing an agreement.

Please give this matter appropriate consideration, and send your response directly to Senator Mikulski's State Director, Lori Albin, 901 S. Bond Street, Suite 310, Baltimore, MD 21231 and Senator Cardin's Project Director, Ann Jacobs, 509 Hart Senate Office Building, Washington, DC 20510.

Thank you very much for your consideration. We look forward to hearing from you.

Sincerely,



Barbara A. Mikulski
United States Senator



Benjamin L. Cardin
United States Senator

BARBARA BOXER, CALIFORNIA, CHAIRMAN

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

August 22, 2014

The Honorable Gina McCarthy
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Dear Administrator McCarthy:

Thank you for appearing before the Committee on Environment and Public Works on July 23, 2014, at the hearing entitled, "Oversight Hearing: EPA's Proposed Carbon Pollution Standards for Existing Power Plants." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

Enclosed are questions for you that have been submitted by Senators Boxer, Markey, Sessions, Fischer, Wicker, Vitter and Inhofe for the hearing record. Please submit your answers to these questions by COB September 5, 2014 to the attention of Colin MacCarthy, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to Colin_MacCarthy@epw.senate.gov. To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Joe Mendelson of the Majority Staff at (202) 224-8832, or Bryan Zumwalt of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,



Barbara Boxer
Chairman



David Vitter
Ranking Member

Environment and Public Works Committee Hearing
July 23, 2014
Follow-Up Questions for Written Submission

Questions for McCarthy

Questions from:

Senator Barbara Boxer

1. Administrator McCarthy, in May of this year, the National Climate Assessment found that increases in global temperatures would cause associated increases in premature deaths related to worsened ozone and particle pollution. How will actions to reduce dangerous carbon pollution under EPA's proposed rule impact the nation's air quality? Will the rules result in significant health benefits from reductions in air pollution emissions? Please describe these benefits.
2. Administrator McCarthy, EPA's proposed carbon standards are pursuant to legal authority under Section 111 of the Clean Air Act. Section 111 of the Clean Air Act is designed to foster the implementation and development of new pollution control technologies. Can you explain the Clean Air Act's historic role in creating American leadership in the development of environmental technologies? Can you describe how the proposed rules will enhance America's leadership in developing new innovations in air pollution controls, energy efficiency, and renewable energy technologies?

Environment and Public Works Committee Hearing
July 23, 2014
Follow-Up Questions for Written Submission

Questions for McCarthy

Questions from:

Senator Edward J. Markey

1. Please clarify what the EPA is required to complete in terms of cost-benefit analyses of the proposed power plant rule and specify whether these costs and benefits are required to be examined in the domestic or international context. Did the EPA complete these required analyses? What were the results? How and to what extent is the social cost of carbon incorporated into these analyses?

Environment and Public Works Committee Hearing
July 23, 2014
Follow-Up Questions for Written Submission

Questions for McCarthy

Questions from:

Senator Jeff Sessions

1. Your proposal makes a lot of assumptions that include a large increase in the electricity generated from natural gas. Does your cost-benefit calculation consider the cost of additional natural gas pipeline infrastructure necessary to comply with the ruling? Does it also include the loss in jobs and economic output that are associated with any significant increase in the cost of natural gas? Does your analysis include any rise in price for natural gas as a result of increased consumption?
2. You asked for comment on whether the rule “should include in the state goals... nuclear capacity whose construction is sufficiently likely....” Has EPA staff ever before decided if a nuclear power plant should or should not be built? Can you please detail the decision-making process that EPA used in that situation?
3. Your rule assumes that Watts Bar Unit 2 is completed and begins operating. Can you please detail the impact to Tennessee’s emissions rate targets if the NRC denies Watts Bar Unit 2 an operating license? Can you please describe EPA’s ability to pre-judge an NRC technical matter such as the issuance of an operating license for a nuclear power plant?
4. In the history of the Clean Air Act, isn’t it true that EPA has never used Section 111(d) of the Clean Air Act to control emissions from sources that are outside the boundaries of the source being regulated?
5. In the Supreme Court’s ruling last month in *UARG v. EPA*, the Court expressed skepticism about EPA efforts to reinterpret longstanding provisions of the Clean Air Act in a manner that exercises vast new EPA powers.
 - i. Do you believe that Congress has ever spoken “clearly” in Section 111(d) to give EPA this “vast economic” power to control energy generation in all 50 states?
 - ii. This Committee held a hearing on June 18th to discuss the Administration’s global warming agenda. Alabama Attorney General Luther Strange explained that EPA is prohibited by law from regulating sources under Section 111(d) if EPA has already regulated those sources under Section 112 of the Clean Air Act. In 2012, EPA issued a final rule entitled “Utility MACT” (also called the “MATS” rule). Didn’t that rule regulate coal-fired power plants under Section 112? Given that,

please explain how regulation of coal-fired power plants under Section 111(d) is not therefore prohibited.

6. It has been suggested by some in the Administration and their supporters that, since Congress has declined to pass legislation on climate change, that EPA must take action on its own. Yet, according to a September 2013 report by the Congressional Research Service, "Direct federal funding to address global climate change totaled approximately \$77 billion from FY2008 through FY2013." This included research, technology development, and other programs.
 - i. Did Congress "decline to act" when it spent this vast amount of taxpayer funds on climate-related programs and actions?
 - ii. Isn't it true that, in our system of government, federal agencies can only act legally pursuant to valid authorizations from Congress, not in the absence of action by Congress?
7. EPA's power-plant carbon regulations will require states to fundamentally reorganize their state public utility commissions and environmental regulators in order to implement carbon planning. These changes will inevitably require action by state legislatures. I'm concerned EPA's rushed timeline forces state legislators to confront difficult issues in short order. Did EPA account for the need for state legislation when it formed this timeline? What would be the result if state legislators refuse to enact legislation needed for a state to comply with EPA's existing source performance standards?
8. Ninety-nine percent of the benefits EPA claimed in the Mercury and Air Toxics Standard were purported from PM_{2.5} reductions. Almost all of the benefits from the Cross State Air Pollution Rule were from PM_{2.5} reductions. And now, once again, a majority of the benefits for EPA's power-plant carbon regulations come from PM_{2.5}. It appears that you are counting the same benefits twice. Please state the benefits that are not related to PM.
9. The 111(d) proposed rule and supporting documents assert that rising temperatures are occurring. But we have now gone more than 17 years without a significant increase in global temperatures. How many years will we have to go without a significant increase in global temperatures before EPA concludes anthropogenic global warming is unlikely to be catastrophic and does not justify the massive costs your rules seek to impose upon our economy?
10. If the proposed regulations are implemented successfully, and US power plant emissions decrease by 30% from 2005 levels by 2030,
 - i. Will hurricanes that make landfall in the US be less severe and/or less frequent;
 - ii. Will tornadoes in the US be less severe and/or less frequent;
 - iii. Will wildfires in the US be less severe and/or less frequent;
 - iv. Will droughts in the US be less severe and/or less frequent; and

v. Will floods in the US be less severe and/or less frequent?

For each answer to questions a) through e), please provide scientific data or peer-reviewed evidence corroborating your assertions.

11. Three years ago, EPA committed to completing a process by July of this year to determine how forest biomass will be treated under the Agency's greenhouse gas programs. EPA's biomass policy is a critical issue for forest landowners, wood products, and rural communities in my state and across the country, where biomass can create jobs and domestic energy. I understand that EPA has been working to develop a biomass accounting framework. It is essential that the framework clearly recognize that biomass energy is carbon neutral, be simple, and be as close to national scale as possible. Can you provide an update on the timing for the release of the framework, and assure us that it will reflect these principles?

Environment and Public Works Committee Hearing
July 23, 2014
Follow-Up Questions for Written Submission

Questions for McCarthy

Questions from:

Senator Roger Wicker

1. Mississippi Department of Environmental Quality has said that power plants Daniel Units 1 and 2 have spent \$660 million on a scrubber project to comply with recent federal regulations. Does this proposal strand investments that utilities are currently making to comply with other EPA environmental rules?
2. South Mississippi Electric, a not-for-profit consumer owned cooperative, which spent \$65 million in similar upgrades to address the MATS rule. Wouldn't the loss of these assets, along with the cost of replacement power result in a dramatic increase in the cost of electricity for consumers in my state?
3. In Mississippi's state goal calculation, EPA has assumed the state can increase its renewable energy generation by 262 percent from 2012 levels. What proof does EPA have that this is possible in Mississippi? EPA's own technical support documents show zero potential for on-shore wind generation in Mississippi. Did EPA consider that North Carolina's compliance options include demand-side energy efficiency measures and out-of-state renewable energy credits?
4. Three years ago, EPA committed to completing a process by July of this year to determine how forest biomass will be treated under the Agency's greenhouse gas programs. EPA's biomass policy is a critical issue for forest landowners, wood products, and rural communities in my state and across the country, where biomass can create jobs and domestic energy. I understand that EPA has been working to develop a biomass accounting framework. It is essential that the framework clearly recognize that biomass energy is carbon neutral, be simple, and be as close to national scale as possible. Can you provide an update on the timing for the release of the framework, and assure us that it will reflect these principles?

Environment and Public Works Committee Hearing
July 23, 2014
Follow-Up Questions for Written Submission

Questions for McCarthy

Questions from:

Senator Deb Fischer

1. How does EPA justify forcing substantial investments in emission control for sulfur dioxide, NOx (“nox”), and mercury, and then tell the power plants they must run less after making such major investments? Have you calculated stranded investment as part of the cost of this regulation?
2. Often energy is generated in one state and the electricity is consumed in another, or several other states. For example, Laramie River Station, a coal fired plant in Wyoming, has partners in multiple states, Nebraska (LES), Colorado, Wyoming, and North Dakota. Has EPA considered this fairly common practice, and how would individual states be assessed responsibility? Would the State where the generation resource is located be fully responsible for the carbon intensity of that resource?
3. Annual average capacity factor data from the Energy Information Administration shows that the natural gas combined cycle fleet has never achieved a 70% annual average capacity factor. To date, the highest annual average capacity factor of the U.S. combined cycle fleet was 51%. That is a 20% gap between the demonstrated reality for natural gas, as compared with what EPA proposes in the rule. What makes EPA confident that not only the natural gas combined cycle generation infrastructure, but the natural gas supply chain, transmission, and distribution infrastructure is technically capable of achieving this monumental task between now and 2030?
4. Were detailed analyses carried out by EPA to consider the practical and economic impacts associated with what will be an unprecedented dependence on natural gas? Can you please provide those studies as soon as possible so that they can be evaluated during the comment period?
5. The highest annual average capacity factor of 51% for the country’s natural gas combined cycle fleet occurred in 2012 coincidental with very low natural gas prices. As a result, dispatch of natural gas combined cycle units became economical. What proof can EPA provide to the Committee that demonstrates that the Agency has adequately considered fluctuations in natural gas price, supply and demand out to 2030 and beyond, especially when coupled with a 20% increase in the capacity factor, to 70%, to ensure that American working class families will be able to afford to keep the lights on?

6. How did EPA arrive at a 6% heat rate reduction? What evidence does EPA that such an improvement has ever occurred in practice? Did EPA factor in that many units are adding pollution control equipment to comply with MATS by 2016 which will drive heat rates up—and not down? If so, how does EPA end up assuming that heat rates will still improve by 6%?
7. Why are you setting up this new program for power plants while simultaneously stepping away from the RFS and the carbon reductions it brings? Biodiesel, for example, according to your agency's own calculations reduces carbon emissions by up to 86 percent; yet you're proposing an effective cut of at least 30 percent for biodiesel volumes under the RFS this year compared with last year's production. Why the inconsistency?
8. Over the past few months, we've seen commodity markets respond to an expected bumper corn crop. It is good to see carryover stocks recover after the 2012 drought, but these falling commodity prices are obviously going to have an impact on Nebraska's agriculture sector and could even be low enough to trigger federal farm program payments. With the delay and uncertainty surrounding the RFS rulemaking, the EPA is exacerbating this problem. Has EPA evaluated the impacts of your proposed rule on commodity prices, and what do you expect to occur in commodity markets when a final rule is released?

Environment and Public Works Committee Hearing
July 23, 2014
Follow-Up Questions for Written Submission

Questions for McCarthy

Questions from:

Senator David Vitter

1. According to your staff the authority provided to EPA under the Clean Air Act allows for EPA, in the case of an unsatisfactory plan submission by a State, to reject the State plan and put in place a Federal plan. However, nowhere in the proposal as published in the Federal Register is such a Federal plan described. Does EPA plan to develop a model Federal plan for review prior to the closure of the comment period on the proposal? Are you opposed to providing such information?
2. Following on the lack of transparency regarding a Federal plan, if EPA were to reject a State plan or a State were to fail to submit one, please tell the Committee how EPA would enforce any requirements under a Federal plan that necessitates utilities switching to lower or non-emitting resources, RTO markets to change the order of dispatch, or utilities to reduce electricity demand through demand side management energy efficiency measures? Please include references, including those to relevant Clean Air Act provisions, providing the EPA the authority to make such requirements?
3. Did EPA factor load growth or economic growth into the calculation of state emission rate targets?
4. Your statement provided to the Committee, focuses on the importance of reducing carbon dioxide emissions to address climate change. What direct measurable reductions does the existing source proposal achieve in the following:
 - Global average temperature reduction?
 - Sea level rise?
 - What is the margin of error in these estimates?
 - What impact will Australia's recent rejection of its carbon tax have on these reductions?
5. What is the total domestic increase in U.S. natural gas consumption associated with moving to a 70% capacity factor for all Natural Gas Combined Cycle (NGCC) plants?
 - What additional pipeline capacity infrastructure needs to be in place to handle this increased demand?
 - What analysis of this need was conducted and included as part of the proposal?
 - Did the EIA forecasted natural gas price used in the Integrated Planning Model calculations reflect this new 70% capacity factor usage/demand?

- Please tell us the extent to which U.S. pipeline companies added to their pipeline capacity in 2014?
 - Did EPA factor the cost of pipeline construction being passed on to the consumer, in the instance where a pipeline company were to finance the cost of new pipeline construction through take or pay contracts?
6. The highest annual average capacity factor of 51% for the country's natural gas combined cycle fleet occurred in 2012 coincidental with very low natural gas prices. As a result, dispatch of natural gas combined cycle units became economical. What proof can EPA provide to the Committee that demonstrates that the Agency has adequately considered fluctuations in natural gas price, supply and demand out to 2030 and beyond, especially when coupled with a 20% increase in the capacity factor, to 70%, to ensure that American working class families will be able to afford to keep the lights on? Were detailed analyses carried out by EPA to consider the practical and economic impacts associated with what will be an unprecedented dependence on natural gas? Can you please provide those studies to the Committee in advance of the comment period closing so that they can be evaluated during the comment period?
 7. Why are CO2 emissions from under construction NGCC units part of the state goal computation? What happens if those units do not become operational?
 8. Can a state have its target emissions rates adjusted if nuclear units under construction are not completed, since their generation is part of the baseline calculation for the states where those units are located? What would be the process for adjusting the state targets?
 9. According to an analysis by the *Economist* magazine, renewable energy targets in Germany are popular, but their economic consequences are not. As the *Economist* explained, consumers "increasingly dislike" the "side-effects" of subsidizing renewable energy. "First, there is the rising cost of electricity. This is a consequence of a renewable-energy law passed in 2000 which guarantees not only 20 years of fixed high prices for solar and wind producers but also preferred access to the electricity grid. As a result, Bavarian roofs now gleam with solar panels and windmills dominate entire landscapes. Last year, the share of renewables in electricity production hit a record 23.4%."

The *Economist* explained further, "This subsidy is costly. The difference between the market price for electricity and the higher fixed price for renewables is passed on to consumers, whose bills have been rising for years. An average household now pays an extra €260 (\$355) a year to subsidise renewables: the total cost of renewable subsidies in 2013 was €16 billion. Costs are also going up for companies, making them less competitive than rivals from America, where energy prices are falling thanks to the fracking boom."

- Do you believe that Germany's renewable energy policies have delivered zero-carbon energy without harming consumers? Do you believe that states, as they attempt to meet EPA's emissions targets under the proposal for existing power plants, can both deploy

more renewable energy while doing so without raising the cost of electricity, or imposing higher costs on consumers?

10. Do you think the U.S. drilling boom, spurred by the technological advance of hydraulic fracturing, coupled with horizontal drilling, has been positive or negative for the U.S. economy, particularly for consumers?
11. As you know NARUC is a national organization representing State Commissions statutorily responsible for regulating utilities that provide energy services. Earlier this month NARUC passed and adopted a "Resolution on Preserving State Authority over New Electric Generation". It reflects that NARUC takes seriously the Federal Power Act's reservation of authority to the States over utility generation, distribution, and resource portfolios and that NARUC supports legal and legislative actions to protect and preserve States' authority to decide the type, amount and timing of new or existing generation facilities that will be constructed or maintained within the State to achieve legitimate State policy objectives.

With the adoption of this resolution do you disagree that NARUC could be interpreting your existing source proposal under Section 111(d) of the Clean Air Act as usurping the authority reserved to the States by the Federal Power Act to decide the type, amount and timing of new or existing generation facilities that will be constructed or maintained within the State?

12. As you are at least tangentially aware, fossil resources provide the base molecules and products that we need to manufacture virtually everything we use in a modern society. In fact, coal combustion byproducts are what comprise, strengthen and make possible our roads and infrastructure. Chemicals derived from oil and natural gas production are what are refined and manufactured into virtually every product we use today, from computers to our homes, and are what make possible wind turbines (all components derived, manufactured or refined from fossil fuels) and solar panels (all components derived, manufactured or refined from fossil fuels). Accordingly, many claims about eliminating our use of fossil resources are wholly illusory. However, in order to provide a better understanding of some of your claims regarding our nation's dependence on these resources, other than counting intermittent electricity generation as a product, please provide a comprehensive list of all the things that are a product or can be manufactured out of sunlight and wind (again, please exclude electricity).
13. The proposal provides states the flexibility to adopt mass based limitations in lieu of rate based limitations and permits trading among affected sources. Would states be required to pass legislation allowing sources to participate in a cap-and-trade program? Given the length of time for RGGI and California to adopt and stand up their trading program, why does EPA believe that states can adopt these rules by 2018?
14. Is EPA going to offer a copy of the ICF Integrated Planning Model to each state so they may perform their own re-dispatch calculations and arrive at a least cost compliance plan to be included in their SIP submission to EPA?

15. EPA has emphasized that its proposed rule offers significant flexibility to states allowing them to develop plans that align with their unique circumstances, as well as their other environmental policy, energy, and economic goals. However, EPA set very aggressive interim goals for multiple states that would require very significant resource changes by 2020. For example, EPA developed interim goals for Arizona, Mississippi, and Nevada by assuming that all coal-fired power plants would be retired and replaced with other generating resources by 2020. How will EPA work collaboratively with states to develop a more gradual and less economically disruptive approach to achieving emissions reductions?
16. EPA assumes that the heat rate of the existing coal fleet can be improved by 6%. How did EPA arrive at the 6% heat rate reduction for the existing coal fleet? Please confirm the analyses and studies relied up by the Agency in determining the achievement of and cost associated with this heat rate improvement by the existing coal fleet. Did EPA examine a recent analysis provided to the Secretary of Energy by the National Coal Council? Are these materials included in the docket associated with this rulemaking? Did EPA consider the energy penalties associated with control necessary to achieve compliance with MATs and other environmental regulations?
17. EPA stated that it evaluated different baselines for purposes of establishing the building blocks. Is this information and analysis included in the Docket associated with this rulemaking? Is it publicly available?
18. Is the formula by which EPA converted the state goals to mass-based reductions and then aggregated them to arrive at a national reduction goal included in the Docket associated with this rulemaking? Is that formula publicly available?
19. Please confirm that existing hydropower may not be included in State plans? Please confirm that offsets may not be used in State plans to meet emissions rate-based goals or mass-based goals?
20. If a Renewable Energy Credit (REC) is transferred from one state to another due to the sale of either power or RECs, which state can include the emissions reductions represented by the REC in its State Plan? Could banked RECs be included in State compliance plans? What period could the banked RECs cover?
21. When a State compliance plan is approved by EPA, making the elements of which federally enforceable, what provision of the Clean Air Act allows citizen suits to be brought against States when targets included in that compliance plan are not met?
22. While new sources come under Section 111(b) at what point do those sources become part of a compliance demonstration under Section 111(d)?
23. It appears that when setting the energy efficiency targets EPA assumed each State could achieve the same percentage energy efficiency level of 1.5%. If that is correct, why did EPA choose to ignore that differences in each State's energy efficiency potential?

24. Recently, the New York State Department of Environmental Conservation proposed a plan to mitigate damage to fish populations by regularly shuttering the Indian Point nuclear power plant from May 10 to Aug 10 during the highest period of electricity demand. This has set off a debate as to the cost to ratepayers as well as where the 2,000 megawatts of lost generation will come from. Did EPA account for this type of action by a State when crafting the individual state performance goals for CO2 reductions included in the existing source proposal? What would a State need to do to make up for the loss of a significant source of emissions free generation in order to meet its performance goal?
25. On July 6, the New York Times wrote an article describing NRDC's proposal for reducing carbon dioxide pollution from power plants as EPA's "blueprint" for your existing source proposal. In turn you wrote to EPA staff that the article crediting NRDC for the rule is "preposterous."
- How is the New York Times article incorrect?
 - Have you asked for the New York Times to retract the article?
 - Have you asked for the New York Times to issue a correction?

Environment and Public Works Committee Hearing
July 23, 2014
Follow-Up Questions for Written Submission

Questions for McCarthy

Questions from:

Senator James M. Inhofe

1. In your testimony, you said that the EPA is only mandating a reduction in CO2 emissions through this rule, but how will EPA enforce that if a state does not develop and submit a state plan?
2. If EPA implements a federal plan, will it consider using all four of the “building blocks” that are described in the ESPS rule?
3. Under existing authority, can EPA currently require a state to have gas dispatched at 70% of capacity?
 - a. If EPA were to include a higher level of gas dispatch in a federal plan for a state, how would it be enforced? Please provide several hypothetical examples.
4. Under existing authority, can EPA currently require a state to unilaterally restrict electricity demand by 1.5%?
 - a. If EPA were to include a restriction on electricity demand or a requirement for electricity efficiency improvements in a federal plan for a state, how would EPA enforce it? Please provide several hypothetical examples.
5. Under existing authority, can EPA currently mandate the use of renewable electricity in a state?
 - a. If EPA were to include a mandate to use renewable electricity in a federal plan for a state, how would EPA enforce it? Please provide several hypothetical examples.
6. If the ESPS rule is finalized, will it represent an expansion of EPA’s enforcement authority?
7. If the ESPS rule is finalized, will EPA have the authority to do things that it did not previously have?
8. If EPA is not satisfied with the progress a state is making during the ten year compliance window, what will EPA be able to do to ensure compliance is met by the deadline?
9. How much will the ESPS rule reduce global temperatures?

10. How much should projected global temperatures be reduced by to avoid catastrophic global warming?
11. How much additional regulation, in addition to the NSPS and ESPS rules, will be required from EPA to reduce future projected warming by enough to avoid catastrophic global warming?
12. EPA recently rejected a petition by the Sierra Club to require Exxon Mobil to install carbon capture and storage (CCS) technology on a chemical plant in Texas, saying that it would increase the cost of the plant by 25%. In EPA's view this was unreasonable. Separately, EPA is mandating CCS technology at coal fired power plants, which increases their cost by 35%. EPA does not believe this is unreasonable. How do you justify this double standard, where one industry has one acceptable upcharge, but for another industry a lower upcharge is unacceptable?
13. By how much do electricity prices have to go up to prevent any nuclear power plants from retiring in the next several years?

BARBARA A. MIKULSKI, MARYLAND, CHAIRWOMAN

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TOM HARKIN, IOWA
PATTY MURRAY, WASHINGTON
DIANNE FEINSTEIN, CALIFORNIA
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CHARLES E. KIEFFER, STAFF DIRECTOR
WILLIAM D. DUHNKE III, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

<http://appropriations.senate.gov>

September 4, 2014

The Honorable Gina McCarthy
Administrator
United States Environmental
Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

This letter is to request an extension of the detail of Ms. Rita Culp of the U.S. Environmental Protection Agency to the Senate Committee on Appropriations effective October 1, 2014 and ending on January 31, 2015. The detailee is requested to assist the Majority staff of the Appropriations Subcommittee on the Interior, Environment and Related Agencies during the fiscal year 2015 appropriations process. The assignment will be on a non-reimbursable basis with the U.S. Environmental Protection Agency continuing to cover Ms. Culp's salary, benefits, and related expenses, including travel, for the duration of the assignment.

Thank you for your consideration of this request.

Sincerely,



BARBARA A. MIKULSKI
Chairwoman

BAM:tc

**THE WHITE HOUSE OFFICE
REFERRAL**

September 10, 2014

TO: ENVIRONMENTAL PROTECTION AGENCY

ACTION COMMENTS:

ACTION REQUESTED: DIRECT REPLY W/COPY

REFERRAL COMMENTS: WHITE HOUSE WOULD LIKE FOR YOU TO FURNISH A JOINT RESPONSE BETWEEN YOUR AGENCY, LABOR DEPT. AND DEPT. HOMELAND SECURITY AND HAVE NSC REVIEW RESPONSE BEFORE IT IS SENT TO WRITER(s)

DESCRIPTION OF INCOMING:

ID: 1140230

MEDIA: LETTER

DOCUMENT DATE: May 20, 2014

TO: PRESIDENT OBAMA

FROM: THE HONORABLE GEORGE MILLER
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

SUBJECT: ENCLOSURES THE FINDING FROM GAO'S REPORT ENTITLED CHEMICAL SAFETY: ACTIONS NEEDED TO IMPROVE FEDERAL OVERSIGHT OF FACILITIES WITH AMMONIUM NITRATE AND RECOMMENDS ADMINISTRATIVE AND REGULATORY ACTIONS TO CORRECT DEFICIENCIES

COMMENTS:

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE UNDERSIGNED AT (202) 456-2590.

RETURN ORIGINAL CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO: DOCUMENT TRACKING UNIT, ROOM 562, OFFICE OF RECORDS MANAGEMENT - THE WHITE HOUSE, 20500

**THE WHITE HOUSE
DOCUMENT MANAGEMENT AND
TRACKING WORKSHEET**



DATE RECEIVED: May 28, 2014

CASE ID: 1140230

NAME OF CORRESPONDENT: THE HONORABLE GEORGE MILLER

SUBJECT: ENCLOSURES THE FINDING FROM GAO'S REPORT ENTITLED CHEMICAL SAFETY: ACTIONS NEEDED TO IMPROVE FEDERAL OVERSIGHT OF FACILITIES WITH AMMONIUM NITRATE AND RECOMMENDS ADMINISTRATIVE AND REGULATORY ACTIONS TO CORRECT DEFICIENCIES

ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	ACTION		DISPOSITION		
		CODE	DATE	TYPE RESPONSE	CODE	DATE COMPLETED
LEGISLATIVE AFFAIRS	KATIE FALLON	ORG	05/29/2014			

ACTION COMMENTS:

✓ EPA R SEP 10 2014

ACTION COMMENTS:

DOL R SEP 10 2014

ACTION COMMENTS:

DHS R SEP 10 2014

ACTION COMMENTS:

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Congress of the United States
Washington, DC 20515

May 20, 2014

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Obama:

Following the massive ammonium nitrate explosion on April 17, 2013 at West Fertilizer, which killed 14 responders, caused at least 226 injuries and leveled a major portion of the town of West, Texas, Members of Congress asked the Government Accountability Office (GAO) to assess whether there are regulatory gaps that leave workers and nearby communities inadequately protected against similar catastrophic events. This letter highlights the findings from GAO's report entitled *Chemical Safety: Actions Needed to Improve Federal Oversight of Facilities with Ammonium Nitrate* and recommends administrative and regulatory actions to correct deficiencies.

Ammonium nitrate is stored and used in communities all across the United States, putting untold numbers of Americans at risk of experiencing a catastrophic event stemming from poorly regulated ammonium nitrate storage facilities, similar to the West Fertilizer disaster. We urge you to carefully consider the implementation of GAO's recommendations in order to better protect the safety of responders and residents in communities across the country.

Background:

The widespread use of ammonium nitrate fertilizer —coupled with inadequate coordination and oversight by federal agencies charged with worker and community safety—has created concern that more catastrophic incidents could be imminent, unless real change is made in the way this commodity chemical is stored and handled in communities all across the United States.

We applaud your leadership in issuing an Executive Order on Improving Chemical Facility Safety and Security, which directed federal agencies to improve operational coordination with each other, as well as with state and local partners, and to modernize policies, regulations, and standards. We eagerly await the results of the Working Group set up to review this matter.

The West Fertilizer facility was not an unusual facility. According to a report in the *Dallas Morning News*, 20,000 people live within a half mile of the over 70 sites in Texas that reported having large stores of ammonium nitrate¹, with many of those sites using wood or other combustible materials to store the chemical. Ammonium nitrate has been involved in numerous

¹ Dallas Morning News, June 9, 2013, http://res.dallasnews.com/interactives/West/0609_Pointsofconcern.html

other major incidents in both the United States and Europe since 1986. A 2001 explosion in France caused 31 fatalities, 2,500 injuries and widespread community damage. As of August 2013, over 1,300 facilities in 47 states have reported the storage of ammonium nitrate to the Department of Homeland Security (DHS), but numerous obstacles have prevented the DHS from obtaining a complete count of facilities. Further complicating matters, the Occupational Safety and Health Administration (OSHA) lacks information about facilities containing ammonium nitrate, and lacks the resources to provide adequate oversight. At its current staffing and inspection levels, it would take federal OSHA— an estimated 139 years to inspect each workplace under its jurisdiction just once.²

GAO Findings

Major Data Gaps: DHS's database captures only a fraction of the ammonium nitrate storage and blending facilities in the U.S., and cannot be relied upon to identify the location of such facilities. GAO sought to quantify that gap and found that as few as one-third of the facilities reporting ammonium nitrate storage to state agencies also reported to DHS.³ Some of the lack of reporting to DHS may be due to non-compliance; however, other facilities are not required to file with DHS because they are exempted by statute, rules or reporting thresholds.⁴ Additionally, GAO was unable to quantify the extent of potential reporting gaps, because officials in some states would not provide information on the location of ammonium nitrate fertilizer storage facilities to GAO due to differing state interpretations of whether the Emergency Planning and Community Right-to-Know Act (EPCRA) restricted such release.⁵ Whether this obstacle could be faced by other federal agencies should be assessed.

Lack of Data Sharing: GAO reported that DHS does not currently share its facility data with OSHA, which impairs OSHA's ability to design a targeted inspection program to monitor facilities storing and handling large quantities of ammonium nitrate. OSHA also bases its targeting for high hazard chemical facilities, in part, on facility reporting under Environmental Protection Agency's (EPA) Risk Management Program (RMP). While EPA shares information with OSHA on a quarterly basis, ammonium nitrate is not listed as a covered chemical under the EPA's RMP regulations, thus leaving both agencies unable to provide adequate oversight.

² Death on the Job, May 2014, AFL-CIO, pp. 192

³ For example, only 52 of 189 facilities in Texas reporting ammonium nitrate storage were also reporting information to DHS.

⁴ Such as those operated or regulated by MTS, DOE, DoD or NRC, engaged in agriculture, or fall below reporting thresholds.

⁵ Of the states queried by GAO, Tennessee and Missouri would not provide data on facilities with ammonium nitrate, contending that EPCRA limited information disclosure only to inquiries about hazardous material present at a specified facility.

Outdated and Ineffective OSHA and EPA Regulations:

- OSHA's Explosives and Blasting Agents Standard covers ammonium nitrate storage and handling, but it has not been updated since 1971 and contains gaps that may allow unsafe facilities to operate and poor planning to continue. For example, the outdated standard continues to allow the use of flammable materials for the construction of ammonium nitrate storage bins.
- OSHA's Process Safety Management (PSM) standard and the EPA's RMP rule both exclude ammonium nitrate. OSHA previously considered expanding its PSM standard in the late 1990s to add reactive chemicals, such as ammonium nitrate, but this effort ceased in 2001 under the Bush Administration. In 2002, the Chemical Safety Board also recommended that OSHA and EPA cover reactive chemicals under their respective rules. The OSHA PSM standard contains a "retailer" exemption, further limiting the standard's reach.
- A recurring appropriations rider prevents OSHA from inspecting at least 60 facilities storing ammonium nitrate because the facility employs 10 or fewer employees⁶.

Lack of Fertilizer Industry Knowledge of OSHA Requirements: OSHA's requirements for storing ammonium nitrate fertilizer in its Explosives and Blasting Agents standard are not well known by the fertilizer industry. For example, only one in four material safety data sheets prepared by manufacturers of solid ammonium nitrate even listed OSHA's Explosives and Blasting Agents standard as applicable to storage and handling of the chemical. It is understandable that the industry lacked awareness of OSHA's requirements. Prior to the West, Texas explosion, OSHA had cited only one facility for violations of its ammonium nitrate storage requirements in its over 40 year history and that was in 1997 in Florida following an employee complaint. OSHA's release of a chemical advisory in August 2013 and a February 2014 letter to facilities have helped to clarify how OSHA's existing regulations apply to fertilizer facilities. However, additional compliance assistance from OSHA is needed.

Other Industrialized Countries Have More Protective Standards for Ammonium Nitrate: Countries in the European Union and Canada have developed far more protective ammonium nitrate standards than the U.S., including prohibiting the use of wood for storage facilities, mandating routine inspections and requiring risk management plans.

⁶ This appropriations rider was first adopted in 1983. It exempts those establishments with 10 or fewer employees that are within an industry classification where the injury and illness rates are below the national average, except where there is a fatality, multiple hospitalizations or an employee complaint. The rider contains no exception for processes which pose a risk of catastrophic explosion or chemical release.

Recommendations:

As noted by the GAO, major gaps must be filled and loopholes closed in order to assure adequate protection for workers and communities from the dangers of improper storage and handling of ammonium nitrate fertilizer. We urge the Administration to adopt the following recommendations, based on GAO's findings:

- 1) Update OSHA's 43-year old Explosives and Blasting Agents standard to comport with best practices, and include a prohibition on the use of wood or other combustible materials in ammonium nitrate storage facilities, as has been done in other countries.
- 2) Expand OSHA's PSM standard and EPA's RMP rules to cover ammonium nitrate, requiring facilities to assess risks and implement safeguards to prevent future accidents.
- 3) Remove the "retail facilities" exemption under OSHA's PSM standard, which precluded OSHA's PSM standard from applying to anhydrous ammonia handling processes at the West Fertilizer facility, and which would effectively bar OSHA inspections even if ammonium nitrate is subsequently covered under revisions to the PSM standard.
- 4) Increase OSHA compliance assistance to the fertilizer manufacturing and distribution industry on OSHA's existing standards, which cover ammonium nitrate fertilizer.
- 5) Once information has been widely shared, OSHA should develop a targeted inspection program at higher risk ammonium nitrate storage and handling facilities.

As GAO noted, an appropriations rider prevents OSHA from inspecting at least 60 facilities storing ammonium nitrate because the facility employs 10 or fewer employees. We applaud and urge your continued support for a provision in your Fiscal Year 2015 budget request for the Department of Labor, which would allow OSHA to carry out inspections at small businesses (with 10 or fewer employees), excluding small family farms, if such establishments have processes with highly hazardous chemicals covered under the OSHA Process Safety Management Standard or the EPA's Risk Management Program.

Almost every state has some communities at risk of experiencing a catastrophic event stemming from poorly regulated ammonium nitrate storage facilities. The GAO has identified actions that should be taken to mitigate these risks. We urge you to give GAO's recommendations careful

President Barack Obama

May 20, 2014

Page 4

consideration and look forward to working with you on our shared goal of improving protections that will prevent future disasters.

Sincerely,



GEORGE MILLER

Senior Democratic Member

Committee on Education and the Workforce



BARBARA BOXER

Chairman

Senate Committee on Environment
and Public Works

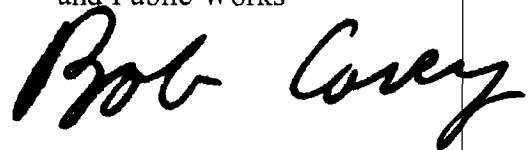


JOE COURTNEY

Ranking Member

Workforce Protections Subcommittee

Committee on Education and the Workforce



ROBERT P. CASEY, JR.

Chairman

Subcommittee on Employment and
Workplace Safety

Senate Committee on Health
Education Labor and Pensions



PATTY MURRAY

Chairman

Senate Budget Committee

cc: The Honorable Thomas E. Perez, Secretary, Department of Labor
The Honorable Jeh Johnson, Secretary, Department of Homeland Security
Gina McCarthy, Administrator, Environmental Protection Agency
Mike Boots, Acting Chair, Council on Environmental Quality
Chemical Facility Safety and Security Working Group

Enclosure



May 2014

CHEMICAL SAFETY

Actions Needed to Improve Federal Oversight of Facilities with Ammonium Nitrate

This Report Is Temporarily Restricted Pending
Official Public Release.

GAO Highlights

Highlights of GAO-14-274, a report to congressional requesters

Why GAO Did This Study

In April 2013, about 30 tons of ammonium nitrate fertilizer detonated during a fire at a facility in West, Texas, killing at least 14 people and damaging nearby schools, homes, and a nursing home. This incident raised concerns about the risks posed by similar facilities across the country. OSHA and EPA play a central role in protecting workers and communities from chemical accidents, and DHS administers a chemical facility security program. GAO was asked to examine oversight of ammonium nitrate facilities in the United States and other countries. This report addresses (1) how many facilities have ammonium nitrate in the United States, (2) how OSHA and EPA regulate and oversee facilities that have ammonium nitrate, and (3) what approaches selected other countries have adopted for regulating and overseeing facilities with ammonium nitrate. GAO analyzed available federal data and data from selected states with high use of ammonium nitrate; reviewed federal laws and regulations; and interviewed government officials, chemical safety experts, and industry representatives in the United States and selected countries.

What GAO Recommends

GAO is recommending that federal agencies improve data sharing, OSHA and EPA consider revising their related regulations to cover ammonium nitrate, and OSHA conduct outreach to the fertilizer industry and target high risk facilities for inspection. DHS, EPA, and OSHA agreed with GAO's recommendations and suggested technical changes, which GAO incorporated as appropriate.

View GAO-14-274. For more information, contact Revae Moran at (202) 512-7215 or moranr@gao.gov.

CHEMICAL SAFETY

Actions Needed to Improve Federal Oversight of Facilities with Ammonium Nitrate

What GAO Found

Federal data provide insight into the number of facilities in the United States with ammonium nitrate but do not provide a complete picture because of reporting exemptions and other data limitations. The Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) do not require facilities to report their ammonium nitrate holdings. The Department of Homeland Security (DHS) requires facilities with certain quantities of ammonium nitrate to report their holdings for security purposes. While the total number of facilities in the United States with ammonium nitrate is unknown, as of August 2013, at least 1,300 facilities in 47 states reported to DHS that they had reportable quantities of ammonium nitrate. Federal law also requires certain facilities to report their ammonium nitrate holdings to state and local authorities for emergency planning purposes, but these data are not routinely shared with federal agencies. According to EPA, states are not required to report these data to federal agencies, and each state determines how to share its data. As part of an Executive Order on Improving Chemical Facility Safety and Security issued in August 2013, federal agencies are exploring options for improving data sharing, but this work is not yet complete.

OSHA and EPA provide limited oversight of facilities that have ammonium nitrate. OSHA's regulations include provisions for the storage of ammonium nitrate, but the agency has done little outreach to increase awareness of these regulations within the fertilizer industry, a primary user. In addition, the regulations have not been significantly revised since 1971 and allow storage of ammonium nitrate in wooden buildings, which could increase the risk of fire and explosion. Other OSHA and EPA chemical safety regulations—which require facilities to complete hazard assessments, use procedures to prevent and respond to accidents, and conduct routine compliance audits—do not apply to ammonium nitrate. Furthermore, although OSHA targets worksites in certain industries for inspection, its inspection programs do not target facilities with ammonium nitrate and, according to OSHA officials, information on these facilities is not available to them to use for targeting the facilities. International chemical safety guidance suggests authorities should provide facilities information on how regulatory requirements can be met and periodically inspect them.

GAO reviewed approaches to overseeing facilities with ammonium nitrate in Canada, France, Germany, and the United Kingdom, selected in part based on recommendations from chemical safety experts. According to foreign officials and government documents, these countries require facilities with specified quantities of ammonium nitrate to assess its risk and develop plans or policies to prevent chemical accidents. For example, Canadian officials said facilities with 22 tons or more of ammonium nitrate are required to complete a risk assessment and an emergency plan. Some countries' storage requirements also restrict the use of wood to store ammonium nitrate. For example, officials told GAO that France restricted the use of wood for storing ammonium nitrate fertilizer after several incidents involving ammonium nitrate fertilizer, and German officials told GAO that certain ammonium nitrate and ammonium nitrate-based preparations must be separated from combustible materials by brick or concrete walls.

Contents

Letter		1
	Background	5
	Over 1,300 Facilities in 47 States Reported Having Ammonium Nitrate, but Data Limitations Prevent Obtaining a Complete Count of Facilities	13
	OSHA Has Not Focused Its Enforcement Efforts on Ammonium Nitrate and EPA Has Not Regulated It as a Hazardous Material	23
	Some Countries Regulate and Oversee Ammonium Nitrate By Imposing Requirements on Facilities, Conducting Inspections, and Supporting Industry Initiatives to Promote Compliance	36
	Conclusions	44
	Recommendations for Executive Action	45
	Agency Comments and Our Evaluation	46
Appendix I	Comments from the Environmental Protection Agency	48
Appendix II	Comments from the Department of Homeland Security	50
Appendix III	Comments from the Department of Labor	52
Appendix IV	GAO Contact and Staff Acknowledgments	54
Tables		
	Table 1: Thresholds for Reporting Ammonium Nitrate under the CFATS Program	10
	Table 2: Number of Facilities that Reported Having Ammonium Nitrate to the Department of Homeland Security (DHS) and the Number of States in Which They Were Located, August 2013	14
	Table 3: Ammonium Nitrate Storage Topics Addressed in Selected Provisions of OSHA's Explosives and Blasting Agents Regulations	24
	Table 4: Number of Facilities Reporting More Than Threshold Amounts of Ammonium Nitrate to DHS That May be	

	Exempt from Planned OSHA Safety Inspections Based on Industry Classification and Number of Employees	32
	Table 5: Selected Key Requirements and Corresponding Threshold Quantities in the European Union's Seveso III Directive for Facilities with Fertilizer Grade Ammonium Nitrate	39
Figures	Figure 1: Photographs of Damage from the Explosion in West, Texas in April 2013	7
	Figure 2: Number of Facilities in Texas that Reported to State Agencies and DHS That They Had Ammonium Nitrate	16
	Figure 3: Number of Facilities in Alabama that Reported to the State and DHS That They Had Ammonium Nitrate	17
	Figure 4: Entities Receiving Federally Required Hazardous Chemical Reports from Facilities	21
Abbreviations		
CFATS	Chemical Facility Anti-Terrorism Standards	
DHS	Department of Homeland Security	
EPA	Environmental Protection Agency	
EPCRA	Emergency Planning and Community Right-to-Know Act of 1986	
EU	European Union	
OECD	Organisation for Economic Co-operation and Development	
OSHA	Occupational Safety and Health Administration	
OSH Act	Occupational Safety and Health Act of 1970	
PSM	Process Safety Management	
RMP	Risk Management Program	

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May 19, 2014

The Honorable Barbara Boxer
Chairman
Committee on Environment and Public Works
United States Senate

The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
House of Representatives

The Honorable Robert P. Casey, Jr.
Chairman
Subcommittee on Employment and Workplace Safety
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Joe Courtney
Ranking Member
Subcommittee on Workforce Protections
Committee on Education and the Workforce
House of Representatives

On April 17, 2013, about 30 tons of ammonium nitrate fertilizer detonated during a fire at a fertilizer storage and distribution facility in West, Texas, killing at least 14 people and injuring more than 200 others. The explosion severely damaged or destroyed nearly 200 homes, three nearby schools, a nursing home, and an apartment complex.¹ While ammonium nitrate is widely used in agriculture, mining, and other industries, the Texas tragedy underscores the need for great care in its storage and handling. Today, significant quantities of ammonium nitrate fertilizer are stored in facilities across the United States. In 2012, use of ammonium nitrate fertilizer in

¹ *Hearing on Oversight of Federal Risk Management and Emergency Programs to Prevent and Address Chemical Threats, Including the Events Leading up to the Explosions in West, Texas and Geismar, Louisiana, Before the Senate Comm. on Environment and Public Works, 113th Cong. 1st Sess., June 27, 2013* (statement of Rafael Moure-Eraso, Chairman, Chemical Safety and Hazard Investigation Board (Chemical Safety Board)). The Chemical Safety Board is an independent federal safety board charged with investigating chemical accidents.

the United States amounted to 853,093 tons.² In 2010, U.S. companies reported producing about 7.5 million tons of ammonium nitrate.³ The total number and location of facilities in the United States in which ammonium nitrate is stored, however, is not known.

In response to the explosion in West, Texas, President Obama issued an Executive Order on August 1, 2013 designed to improve the safety and security of chemical facilities and reduce the risks that hazardous chemicals pose to workers and communities.⁴ The order, which includes a focus on ammonium nitrate, established a federal working group to improve federal coordination with state and local partners; enhance federal agency coordination and information sharing; modernize policies, regulations, and standards; and work with stakeholders to identify best practices.

Several federal agencies are involved in regulating facilities with hazardous chemicals, but the Department of Labor's Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) play central roles in protecting workers and communities from chemical accidents at facilities.⁵ In addition, the Department of Homeland Security (DHS) administers a chemical facility security program, the Chemical Facility Anti-Terrorism Standards (CFATS) program, which requires certain chemical facilities to report information to DHS and, in some instances, take additional steps to secure their facilities. You asked us to examine federal oversight of facilities with ammonium nitrate in the United States and approaches used by other countries. For this review we addressed the following questions: (1) How many facilities in the United States have ammonium nitrate? (2) How do OSHA and EPA regulate and oversee facilities that have ammonium

² Association of American Plant Food Control Officials and The Fertilizer Institute, *Commercial Fertilizers 2012*, Columbia, Missouri. This publication reports fertilizer consumption data submitted by state fertilizer control offices. The consumption data include total sales or shipments of fertilizer for farm and non-farm use by state.

³ U.S. Census Bureau, *Current Industrial Reports, Fertilizers and Related Chemicals – 2010*, MQ325B(10)-5, June 2011.

⁴ Improving Chemical Facility Safety and Security, Exec. Order No. 13,650, 78 Fed. Reg. 48,029 (Aug. 7, 2013).

⁵ In this report, we use the term facility to mean any fixed site where hazardous chemicals are present, which can include chemical manufacturers, distributors, and farm supply retailers. The term facility may be defined differently for regulatory purposes.

nitrate? (3) What approaches have selected other countries adopted for regulating and overseeing facilities with ammonium nitrate?

To answer question 1, we analyzed data from DHS's CFATS program and other sources on the number and types of facilities that reported having ammonium nitrate as of August 2013 and documented the limitations of the data.⁶ To assess the reliability of the CFATS data, we reviewed agency documentation, interviewed DHS officials, and performed electronic testing of required data elements. We also requested state data on facilities that reported having ammonium nitrate from four states with high ammonium nitrate fertilizer consumption—Alabama, Missouri, Tennessee, and Texas⁷—and received data from Texas and Alabama.⁸ We compared data collected by DHS to other data sources, including chemical inventory data from Alabama and Texas, which were identified as leading users of ammonium nitrate fertilizer, and trade data collected by DHS's Customs and Border Protection agency on U.S. imports and exports of ammonium nitrate.⁹ Our primary purpose in comparing CFATS data with data from other sources was to determine whether the CFATS data represent a complete count of facilities with ammonium nitrate. We determined that the CFATS data were sufficiently reliable for purposes of providing the number and type of facilities that reported having ammonium nitrate at levels that met thresholds for reporting under CFATS. As we discuss later in this report, certain

⁶ DHS requires facilities to report if they possess certain chemicals at or above its screening threshold quantities. This may include facilities that manufacture, process, use, store, or distribute these chemicals.

⁷ These four states accounted for about 55 percent of U.S. ammonium nitrate fertilizer consumption in 2012. Alabama represents about 10 percent, Missouri represents about 19 percent, Tennessee represents about 18 percent, and Texas represents about 8 percent. Source: Commercial Fertilizers 2012 report published by the Association of American Plant Food Control Officials and The Fertilizer Institute.

⁸ These data are collected pursuant to the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). State responses to our data requests appeared, in part, to reflect differing interpretations of EPCRA. Officials from Missouri and Tennessee said that they would provide data only in response to a written request about specific facilities, citing an EPCRA provision on availability of data to the public. Because a complete list of facilities with ammonium nitrate was not readily available, we were unable to ask for data by facility.

⁹ DHS's Customs and Border Protection agency collects real time data on shipments of products to and from the United States as part of its efforts to facilitate international trade and protect national security.

limitations of the data did not allow us to determine whether all facilities that should have reported to DHS actually did so.

For question 2, we reviewed relevant federal laws and regulations, focusing on OSHA's and EPA's regulations, including the types of facilities covered by the regulations.¹⁰ We also interviewed federal agency officials regarding their oversight practices.

To describe the approaches selected other countries have adopted for regulating and overseeing facilities with ammonium nitrate, we reviewed approaches used by selected member countries of the European Union (EU) and the Organisation for Economic Co-operation and Development (OECD): Canada, France, Germany, and the United Kingdom. To select these four countries, we considered the extent to which the countries use ammonium nitrate fertilizer, the results of our literature search, and recommendations from our interviews with chemical safety experts. There are key differences between the United States and these other countries, including the size of the country, the size of the agriculture industry, and the amount of ammonium nitrate used. We interviewed government officials from the EU and the countries selected and reviewed documents provided by the officials. We did not conduct an independent legal analysis to verify the information provided about the laws, regulations, or policies of the foreign countries selected for this study. We also interviewed U.S. and international fertilizer industry associations, chemical safety experts, and federal officials to obtain their views on U.S. chemical safety regulations and oversight, and the practices of the selected countries.

We conducted this performance audit from June 2013 to May 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹⁰ In this review, we sought to identify federal regulations that apply to ammonium nitrate used as a fertilizer. Although the regulations we identified may also apply to ammonium nitrate used for other purposes (for example, as a blasting agent), additional federal regulations may apply in these contexts that are not discussed in this report.

Background

Use and Hazards of Ammonium Nitrate

Ammonium nitrate products are manufactured and sold in various forms, depending upon their use. For example, ammonium nitrate fertilizer may be produced and sold in liquid form or as solid granules.¹¹ According to The Fertilizer Institute, solid ammonium nitrate fertilizer is used heavily by farmers in Alabama, Missouri, Tennessee, and Texas primarily on pastureland, hay, fruit, and vegetable crops.¹² In addition to its agricultural benefits, ammonium nitrate can be mixed with fuel oil or other additives and used by the mining and construction industries as an explosive for blasting.¹³

While ammonium nitrate can increase agricultural productivity, use of this chemical poses a safety and health risk because it can intensify a fire and, under certain circumstances, explode. Ammonium nitrate by itself does not burn, but it increases the risk of fire if it comes in contact with combustible materials. Ammonium nitrate that is stored in a confined space and reaches high temperatures can explode.¹⁴ An explosion is more likely to occur if ammonium nitrate is contaminated by certain materials, such as fuel oil, or if it is stored in large stacks.

Because of ammonium nitrate's potential to facilitate an explosion, facilities storing ammonium nitrate may pose a security threat in part because it can be used to make weapons. Ammonium nitrate fertilizer

¹¹ According to the Chemical Safety Board, a granular solid form of ammonium nitrate was stored at the West, Texas facility. *Senate Hearing on Chemical Threats* (June 27, 2013) (statement of CSB Chairman Rafael Moure-Eraso). Fertilizer sales data published by the Department of Agriculture suggest that solid ammonium nitrate fertilizer represents about 3 percent of all types of fertilizer sold in the United States and that ammonium nitrate fertilizer sales have generally declined in recent years.

¹² The Fertilizer Institute is a national organization representing producers, importers, retailers, and others involved in the fertilizer industry.

¹³ Products containing ammonium nitrate can vary in their composition and chemical properties, depending on the purpose for which they will be used, such as a fertilizer or as an explosive. Different types of ammonium nitrate may be subject to different regulatory requirements, as discussed later in this report.

¹⁴ Information about the hazards of ammonium nitrate can be found in the International Chemical Safety Card for Ammonium Nitrate published by the National Institute for Occupational Safety and Health, which is part of the Department of Health and Human Services' Centers for Disease Control and Prevention.

has been used by domestic and international terrorists to make explosive devices.¹⁵ For example, on April 19, 1995, ammonium nitrate fertilizer—mixed with fuel oil—was used by a domestic terrorist to blow up a federal building in Oklahoma City, Oklahoma. The explosion killed 168 people and injured hundreds more.

Ammonium nitrate has been involved in several major chemical accidents over the past century, including explosions in the United States and Europe. In addition to killing at least 14 people and injuring more than 200 others, the explosion in West, Texas severely damaged or destroyed nearly 200 homes; an apartment complex; and three schools that were, at the time, unoccupied (see fig. 1).¹⁶ Prior to that incident, an explosion in 1994 involving ammonium nitrate at a factory in Port Neal, Iowa killed four workers and injured 18 people. In 1947, explosions aboard two ships holding thousands of tons of ammonium nitrate fertilizer killed more than 500 people, injured approximately 3,500, and devastated large areas of industrial and residential buildings in Texas City, Texas. In Europe, accidents involving ammonium nitrate have occurred in Germany, Belgium, and France. A 1921 accident in Germany and one in Belgium in 1942 caused hundreds of deaths after explosives were used to break up piles of hundreds of tons of ammonium nitrate, resulting in large scale detonations. In France, a ship carrying more than 3,000 tons of ammonium nitrate exploded in 1947, a few months after the Texas City disaster, after pressurized steam was injected into the storage area in an attempt to put out a fire. In 2001, an explosion at a fertilizer plant in Toulouse, France involving between 22 and 132 tons of ammonium nitrate resulted in 30 deaths, thousands of injuries requiring hospitalization, and widespread property damage. Past accidents also indicate that smaller quantities of ammonium nitrate can cause substantial damage. For example, in 2003, an explosion of less than 6 tons of ammonium nitrate in a barn in rural France injured 23 people and caused significant property damage.

¹⁵ See GAO, *Combating Terrorism: State Should Enhance Its Performance Measures for Assessing Efforts in Pakistan to Counter Improvised Explosive Devices*, GAO-12-614 (Washington, D.C.: May 15, 2012).

¹⁶ *Senate Hearing on Chemical Threats* (June 27, 2013) (statement of CSB Chairman Rafael Moure-Eraso).

Figure 1: Photographs of Damage from the Explosion in West, Texas in April 2013



Source: Chemical Safety Board.



Source: Chemical Safety Board.

Federal Agencies' Responsibilities for Promoting Chemical Safety and Security

OSHA and EPA play key roles in protecting the public from the effects of chemical accidents, with EPA focusing on the environment and public health and OSHA focusing on worker safety and health. Under the Occupational Safety and Health Act of 1970 (OSH Act), OSHA is the federal agency responsible for setting and enforcing regulations to protect workers from hazards in the workplace, including exposure to hazardous chemicals.¹⁷ In addition, the Clean Air Act Amendments of 1990 designated roles for both OSHA and EPA with respect to preventing chemical accidents and preparing for the consequences of chemical accidents.¹⁸ In response to requirements in this act, OSHA issued Process Safety Management (PSM) regulations in 1992 to protect workers engaged in processes that involve certain highly hazardous chemicals, and EPA issued Risk Management Program (RMP) regulations in 1996 to require facilities handling particular chemicals to plan how to prevent and address chemical accidents.¹⁹ The PSM and RMP regulations each apply to processes involving a specified list of chemicals above threshold quantities, and require covered facilities to take certain steps to prevent and prepare for chemical accidents. However, neither OSHA's PSM regulations nor EPA's RMP regulations cover ammonium nitrate.

The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) establishes authorities for emergency planning and preparedness and emergency release notification reporting, among other things.²⁰ Under section 312 of EPCRA and EPA regulations, facilities with certain hazardous chemicals in amounts at or above threshold levels—including ammonium nitrate in some circumstances—are required to annually submit chemical inventory forms to state and local authorities to

¹⁷ Pub. L. No. 91-596, 84 Stat. 1590 (codified as amended at 29 U.S.C. §§ 553, 651-78). OSHA's regulations on hazardous materials may be found in subpart H of 29 C.F.R. pt. 1910. OSHA's regulations apply to private sector workplaces and some federal government workplaces. In this report, we focused on regulations that apply to private sector workplaces.

¹⁸ Pub. L. No. 101-549, §§ 301, 304, 104 Stat. 2399, 2563-74, 2576-77.

¹⁹ See 29 C.F.R. § 1910.119 and app. A (OSHA's regulation on process safety management of highly hazardous chemicals) and 40 C.F.R. pt. 68 (EPA's risk management program regulations).

²⁰ Pub. L. No. 99-499, tit. III, 100 Stat. 1613, 1728-58 (codified at 42 U.S.C. §§ 11001-50).

help emergency response officials prepare for and respond to chemical incidents.²¹

For purposes of enhancing chemical facility security, the Department of Homeland Security (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) program requires facilities possessing certain chemicals at or above threshold quantities—including some types of ammonium nitrate—to submit reports to DHS with information about the facility and the regulated chemicals present on site.²² Among other things, DHS collects information on the quantities of certain hazardous chemicals held at facilities, the location of the facilities, and their industry codes.²³ DHS set different threshold quantities for reporting based on the type of ammonium nitrate and the type of security risk presented (see table 1).

²¹ 42 U.S.C. § 11022. EPA's regulations implementing sections 311 and 312 of EPCRA, pertaining to hazardous chemical reporting, are found at 40 C.F.R. pt. 370. As discussed later in this report, according to an August 2013 chemical advisory issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), EPA, and OSHA, ammonium nitrate is considered a hazardous chemical subject to the EPCRA reporting provisions. However, EPCRA exempts any substance "to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer." 42 U.S.C. § 11021(e)(5). According to the advisory, this exemption applies only to ammonium nitrate retailers, not to manufacturers or wholesalers; any ammonium nitrate that is mixed or formulated with other chemicals by facilities is not covered by the exemption.

²² 6 C.F.R pt. 27 and app. A. DHS established the CFATS program in response to a requirement in its annual appropriations. See Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, § 550, 120 Stat. 1355, 1388-89 (2006). DHS issued the CFATS regulations in 2007 and the list initially included 322 chemicals of interest and the screening threshold quantities for each chemical. Additional requirements may apply to specific facilities based on the information provided or other factors. For more information on the CFATS program see: GAO, *Critical Infrastructure Protection: DHS Needs to Improve Its Risk Assessments and Outreach for Chemical Facilities*, GAO-13-801T (Washington, D.C.: Aug. 1, 2013); GAO, *Critical Infrastructure Protection: DHS Efforts to Assess Chemical Security Risk and Gather Feedback on Facility Outreach Can Be Strengthened*, GAO-13-353 (Washington, D.C.: Apr. 5, 2013); and GAO, *Critical Infrastructure Protection: Observations on DHS Efforts to Identify, Prioritize, Assess, and Inspect Chemical Facilities*, GAO-14-365T (Washington, D.C.: Feb. 27, 2014).

²³ North American Industry Classification System (NAICS) industry codes are used to classify the industry that best describes the facilities that report to DHS.

Table 1: Thresholds for Reporting Ammonium Nitrate under the CFATS Program

Type of Ammonium Nitrate	Reporting Threshold
Ammonium nitrate with more than 0.2 percent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance ^a	400 pounds or more for a theft risk (if in transportation packaging) ^c and 5,000 pounds or more for a release risk
Solid ammonium nitrate with a nitrogen concentration of 23 percent or greater, and, if in a mixture, a minimum ammonium nitrate concentration of 33 percent or greater ^b	2,000 pounds or more for a theft risk (if in transportation packaging)

Source: CFATS regulations, 6 C.F.R. pt. 27 and app. A.

^a According to DHS, this type of ammonium nitrate is more commonly used as an explosive and is regulated by the Department of Transportation as a Division 1.1 explosive. Division 1.1 consists of explosives that have a mass explosion hazard. A mass explosion is one which affects almost the entire load instantaneously. 49 C.F.R. § 173.50(b)(1).

^b According to DHS, this type of ammonium nitrate is more commonly used by the agricultural community as a fertilizer; however, it may be compounded with other ingredients to create an explosive.

^c DHS's CFATS regulations provide that in calculating whether a facility possesses a threshold amount of a chemical that poses a theft or diversion risk, the facility shall only include those chemicals that are in transportation packaging as defined by Department of Transportation regulations. 6 C.F.R. § 27.203(c).

Not all facilities with ammonium nitrate, however, are required to file CFATS reports with DHS. First, facilities are only required to report if they are holding amounts equal to or greater than threshold quantities of specific types of ammonium nitrate. Also, DHS does not require certain agricultural producers to report their chemical holdings to DHS.²⁴ In addition, DHS's reporting threshold for ammonium nitrate fertilizer only applies to quantities held in transportable containers such as cylinders, bulk bags, bottles (inside or outside of boxes), cargo tanks, and tank cars.²⁵ Finally, there are several statutory exemptions to CFATS

²⁴ Pursuant to its authority under 6 C.F.R. § 27.210(c), DHS has extended the deadline for submitting CFATS reports until further notice for certain agricultural production facilities, such as farms, ranches, turfgrass growers, golf courses, nurseries, and public and private parks. See Notice to Agricultural Facilities About Requirement To Complete DHS' Chemical Security Assessment Tool, 73 Fed. Reg. 1640 (Jan. 9, 2008).

²⁵ DHS's CFATS regulations provide that in calculating whether a facility possesses a threshold amount of a chemical that poses a theft or diversion risk, the facility shall only include those chemicals that are in transportation packaging as defined by Department of Transportation regulations. 6 C.F.R. § 27.203(c). DHS considers ammonium nitrate fertilizer a chemical of interest because it can be stolen or otherwise diverted to make explosives.

requirements. Specifically, CFATS does not apply to public water systems or treatment works, any facility that is owned or operated by the Department of Defense or the Department of Energy, facilities regulated by the Nuclear Regulatory Commission, or facilities covered by the Maritime Transportation Security Act of 2002 administered by the Coast Guard.²⁶

Other federal agencies regulate different aspects of the use of hazardous chemicals. For example, the Department of Transportation regulates the transport of hazardous materials, the Coast Guard inspects containers of hazardous materials at ports and waterways, and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in the Department of Justice regulates the manufacture, distribution, and storage of explosive materials, including blasting agents and other explosive materials containing ammonium nitrate.²⁷

State and Local Government Responsibilities for Promoting Chemical Safety

State and local government agencies are also involved in regulating hazardous chemical facilities under federal laws and their own state or local laws. Federal laws may authorize or assign state and local governments certain roles and responsibilities for overseeing chemical facilities. For example, as permitted by the OSH Act, OSHA has approved state plans that authorize about half the states to operate their own occupational safety and health programs.²⁸ As a result, private sector workplaces in 21 states and Puerto Rico are regulated and inspected by

²⁶ Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, § 550(a), 120 Stat. 1355, 1388-89 (2006), 6 C.F.R. § 27.110(b).

²⁷ ATF collects data on individuals that apply for federal explosives licenses and permits, which may include individuals working with ammonium nitrate.

²⁸ The OSH Act allows states to take responsibility for operating their own occupational safety and health programs under state plans approved by OSHA. To receive approval, state plans must meet certain criteria specified in the OSH Act, including the development and enforcement of state standards that are at least as effective as the federal standards. See generally 29 U.S.C. § 667, 29 C.F.R. pts. 1902, 1952, and 1956. Under the OSH Act, "state" is defined to include the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands. See 29 U.S.C. § 652(7).

state occupational safety and health agencies rather than OSHA.²⁹ Similarly, EPA has delegated its authority to implement and enforce the Risk Management Program to nine states and five counties.³⁰ As previously mentioned, both state and local governments play a role in implementing EPCRA, which requires covered facilities to report basic information about their hazardous chemical inventories to certain state and local authorities, including estimates of the amounts of chemicals present at facilities.

In addition, state and local governments may establish and enforce their own laws, regulations, or ordinances to protect the public from chemical accidents. For example, state and local governments may adopt and enforce fire codes or zoning laws that specify how far chemical facilities must be located from residential areas.

Executive Order on Improving Chemical Facility Safety and Security

The Executive Order issued on August 1, 2013 established a Chemical Facility Safety and Security Working Group co-chaired by the Secretary of Homeland Security, the Administrator of EPA, and the Secretary of Labor. The Executive Order includes directives for the working group to: improve operational coordination with state and local partners; enhance federal agency coordination and information sharing; modernize policies, regulations, and standards; and work with stakeholders to identify best practices. The order includes tasks focused specifically on ammonium nitrate.³¹ Specifically, it directs the Secretaries of Homeland Security,

²⁹ OSHA does not enforce standards for state and local public-sector workplaces because the OSH Act does not apply to state and local government employers. 29 U.S.C. § 652(5). States that choose to operate their own state-run programs are required to cover state and local government workers. 29 U.S.C. § 667(c)(6). Five states have state plans that only include state and local government workers; OSHA provides enforcement for the private sector in those states.

³⁰ Under the Clean Air Act, EPA is authorized to delegate its implementation and enforcement authority of section 112 (including the RMP program) to states, provided the state standards are no less stringent than EPA's. 42 U.S.C. § 7412(l), 40 C.F.R. §§ 63.90-63.99. According to EPA officials, the nine states to which EPA has delegated this authority are: Delaware, Florida, Georgia, Mississippi, New Jersey, North Carolina, North Dakota, Ohio, and South Carolina. The five counties to which EPA has delegated this authority are: Buncombe, North Carolina; Forsyth, North Carolina; Mecklenburg, North Carolina; Jefferson, Kentucky; and Allegheny, Pennsylvania.

³¹ In addition to the specific provisions focused on ammonium nitrate, the Executive Order also addresses other hazardous chemicals more generally.

Labor, and Agriculture to develop a list of potential regulatory and legislative proposals to improve the safe and secure storage, handling, and sale of ammonium nitrate. In addition, the Department of Labor and EPA are directed to review the chemical hazards covered by the RMP and PSM regulations and determine whether they should be expanded to address additional hazards.

OECD's Guidance on Chemical Safety

The Organisation for Economic Co-operation and Development (OECD), an intergovernmental organization with 34 member countries, issued guidance in 2003 on the prevention of, preparedness for, and response to chemical accidents.³² This publication was developed with other international organizations active in the area of chemical accident safety, such as the World Health Organization. The document—OECD Guiding Principles for Chemical Accident Prevention, Preparedness and Response—includes detailed guidance for industry, public authorities, and the public on how they can help prevent chemical accidents and better respond when accidents occur.

Over 1,300 Facilities in 47 States Reported Having Ammonium Nitrate, but Data Limitations Prevent Obtaining a Complete Count of Facilities

The total number of facilities in the United States with ammonium nitrate is not known because of the different reporting criteria used by different government agencies, reporting exemptions, and other data limitations. While the total number is unknown, over 1,300 facilities reported having ammonium nitrate to DHS. DHS's data, however, do not include all facilities that work with ammonium nitrate, in part because some facilities, such as farms, currently do not have to report to DHS and, according to DHS officials, other facilities that are required to report may fail to do so.

³² The 34 OECD member countries are Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States. See *OECD Guiding Principles for Chemical Accident Prevention, Preparedness and Response: Guidance for Industry (including Management and Labour), Public Authorities, Communities, and other Stakeholders* (OECD 2003).

DHS Data List Over 1,300 Facilities in 47 States with Ammonium Nitrate

As of August 2013, 1,345 facilities located in 47 states reported to DHS under CFATS that they had ammonium nitrate. The facilities that reported to DHS as having reportable quantities of ammonium nitrate were most often engaged in supplying and supporting the agriculture and mining industries. Many of these facilities were concentrated in the South. About half of these facilities were located in six states: Alabama, Georgia, Kentucky, Missouri, Tennessee, and Texas. Table 2 shows the number of facilities that reported to DHS that they had ammonium nitrate and the number of states in which they were located.

Table 2: Number of Facilities that Reported Having Ammonium Nitrate to the Department of Homeland Security (DHS) and the Number of States in Which They Were Located, August 2013

Type of Ammonium Nitrate	Number of Facilities	Number of States
Ammonium nitrate with more than 0.2 percent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance ^a	230	42
Solid ammonium nitrate with a nitrogen concentration of 23 percent or greater, and, if in a mixture, a minimum ammonium nitrate concentration of 33 percent or greater ^b	941	45
Reported having both types of ammonium nitrate	174	40
Total number of facilities that reported having ammonium nitrate	1,345	47

Source: GAO analysis of DHS data.

^a According to DHS, this type of ammonium nitrate is more commonly used as an explosive and is regulated by the Department of Transportation as a Division 1.1 explosive. The threshold quantity for reporting this type of ammonium nitrate is 400 pounds or more for a theft risk (if in transportable packaging) and 5,000 pounds or more for a release risk.

^b According to DHS, this type of ammonium nitrate is more commonly used by the agricultural community as a fertilizer; however, it may be compounded with other ingredients to create an explosive. The threshold quantity for reporting this type of ammonium nitrate for a theft risk (if in transportation packaging) is 2,000 pounds or more.

State Data and Federal Trade Data Suggest That the Total Number of Facilities with Ammonium Nitrate is Greater Than Those That Report to DHS

Our review of additional state data, including EPCRA data,³³ from Texas and Alabama, which have different reporting criteria than CFATS, indicated that there are more facilities with ammonium nitrate than those that report to DHS.³⁴ We compared the data they provided to the data on facilities that reported to DHS under CFATS. In these two states, we found that the data from each of the sources provided to us differed and that no single count of such facilities, whether from the state or DHS, represented a comprehensive picture of facilities with ammonium nitrate.

For Texas, we reviewed three sources of data on facilities that have ammonium nitrate: (1) EPCRA data from the Texas Department of State Health Services; (2) a list of facilities that registered with the Office of the Texas State Chemist as having plans to produce, store, or sell ammonium nitrate;³⁵ and (3) DHS's CFATS data. We compared data

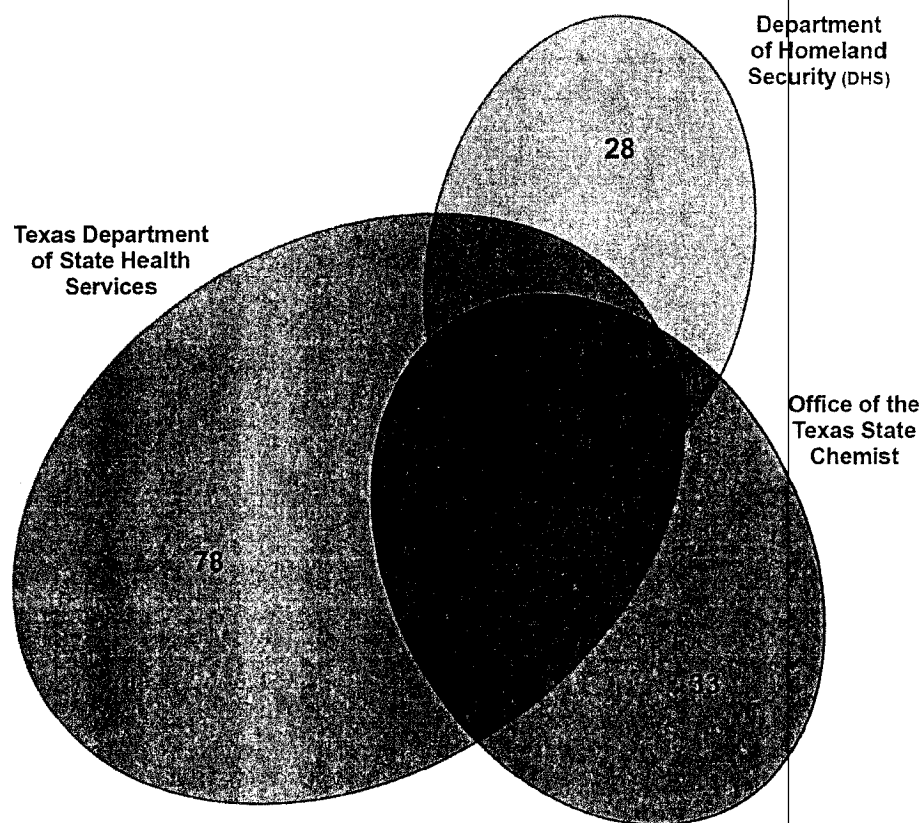
³³ Under section 312 of EPCRA and EPA's regulations, facilities with 10,000 pounds or more of ammonium nitrate generally must submit an annual chemical inventory report to their designated state and local authorities. 42 U.S.C. § 11022, 40 C.F.R. § 370.10(a)(2)(i). The designated authorities are the state emergency response commission, the local emergency planning committee, and the local fire department. A facility is required to submit these reports if (1) it is required to prepare a material safety data sheet (now called a safety data sheet) for a hazardous chemical as defined by OSHA's Hazard Communication regulations, 29 C.F.R. § 1910.1200, and (2) the amount of the hazardous chemical meets or exceeds the threshold set by EPA's regulations. For most hazardous chemicals that are not on EPA's list of Extremely Hazardous Substances, the reporting threshold is 10,000 pounds or more. According to the chemical advisory issued by ATF, EPA, and OSHA in August 2013, ammonium nitrate is not considered an Extremely Hazardous Substance, but it is considered a hazardous chemical under OSHA's Hazard Communication regulations and is therefore subject to the EPCRA provisions. However, EPCRA exempts any substance "to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer." 42 U.S.C. § 11021(e)(5). According to the advisory, this exemption applies only to ammonium nitrate retailers, not to manufacturers or wholesalers; any ammonium nitrate that is mixed or formulated with other chemicals by facilities is not covered by the exemption.

³⁴ We compared the facility names and zip codes of facilities reporting to the state to the facilities that reported to DHS. Because of differences in reporting requirements, the differences in the number of facilities reporting to DHS and the number reporting to the states does not necessarily indicate noncompliance with the requirements.

³⁵ In Texas, facility owners must register with the Office of the Texas State Chemist to produce, store, or sell ammonium nitrate, and there is no minimum threshold amount of ammonium nitrate that applies to this state requirement. See Tex. Agric. Code Ann. §§ 63.151-63.157. This requirement applies to ammonium nitrate that contains more than 33 percent nitrogen, as well as solid fertilizer containing ammonium nitrate, if the fertilizer's nitrogen content from the ammonium nitrate is at least 28 percent of the fertilizer by weight. Facilities are required to keep records of the sale of ammonium nitrate and provide the records upon request to the State Chemist and other state agencies.

from all three of these sources and found 189 facilities that reported having ammonium nitrate (see fig. 2). Of these 189 facilities, 52 filed CFATS reports with DHS. Data were not readily available to determine whether the remaining facilities were required to file CFATS reports. DHS officials told us the agency has begun an effort to obtain lists of chemical facilities the states have compiled and compare them with its CFATS data to identify facilities that should have filed CFATS reports but did not. This effort is still under way. As shown in figure 2, 17 of the 189 facilities in Texas were listed in all three data sources.

Figure 2: Number of Facilities in Texas that Reported to State Agencies and DHS That They Had Ammonium Nitrate

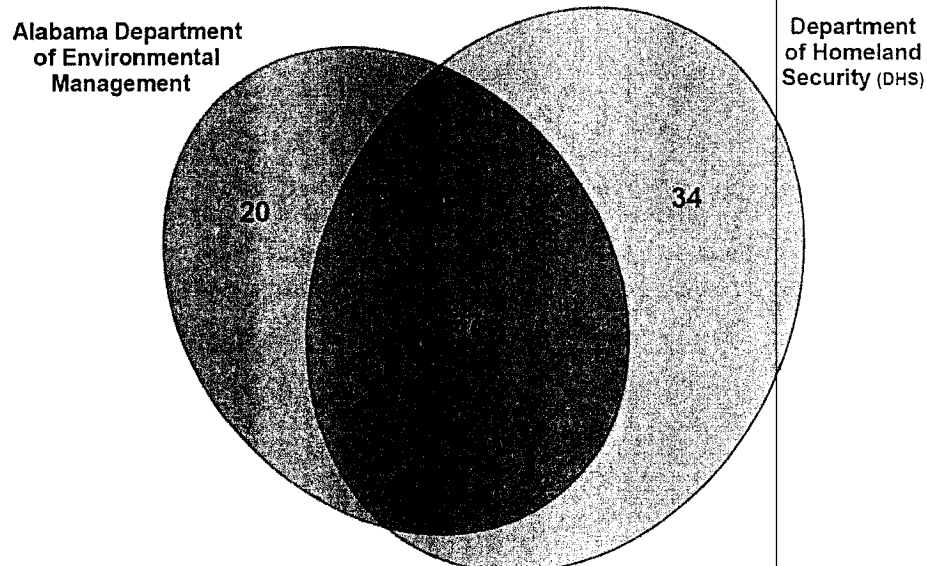


Source: GAO analysis of U.S. Department of Homeland Security and state agency data.

Note: This figure includes data reported to the Texas Department of State Health Services under EPCRA section 312 as of December 2012, data collected by the Office of the Texas State Chemist under state law as of November 2013, and data reported to DHS under the CFATS program as of August 2013. Each of these programs has different reporting criteria, therefore, facilities required to report under one program may not be required to report under another program.

For Alabama, we reviewed data from two sources on facilities that reported having ammonium nitrate: (1) EPCRA data from Alabama's Department of Environmental Management, and (2) DHS's CFATS data.³⁶ From these two sources, we found 91 facilities that reported having ammonium nitrate— 57 that filed EPCRA reports with the state Department of Environmental Management and 71 that filed CFATS reports with DHS. Thirty-seven of the facilities filed reports with both the state and DHS. (See fig. 3.)

Figure 3: Number of Facilities in Alabama that Reported to the State and DHS That They Had Ammonium Nitrate



Source: GAO analysis of U.S. Department of Homeland Security and state agency data.

Note: This figure includes data reported to the Alabama Department of Environmental Management under EPCRA section 312 as of December 2012 and data reported to DHS under the CFATS program as of August 2013. Each of these programs has different reporting criteria, therefore, facilities required to report under one program may not be required to report under another program.

Our analysis of federal trade data collected by DHS's Customs and Border Protection agency also suggests that a greater number of facilities

³⁶ We did not find any other state agencies in Alabama that required reporting of ammonium nitrate holdings similar to the Office of the Texas State Chemist.

have ammonium nitrate than those that reported to DHS under the CFATS program.³⁷ Using the data from the Customs and Border Protection agency, we identified 205 facilities that imported ammonium nitrate products and 81 facilities that exported ammonium nitrate products in fiscal year 2013.³⁸ The majority of these facilities reported importing or exporting mixtures of ammonium nitrate and calcium carbonate or mixtures of urea and ammonium nitrate. Eight of these facilities filed CFATS reports with DHS. Moreover, we found about 100 facilities that imported or exported a form of ammonium nitrate that may be subject to DHS's CFATS requirements for reporting quantities over 2,000 pounds but did not file a report.³⁹ These facilities, however, may not be required to file CFATS reports. For example, they may meet one of the statutory exemptions, or the composition of their ammonium nitrate (or their ammonium nitrate mixture) may not trigger the reporting requirements. Data were not readily available to determine whether they met all of DHS's reporting requirements for the CFATS program. In addition, according to DHS officials, other data limitations could explain some of the differences between the CFATS data and the federal trade data. For example, facilities may submit reports to the different agencies using different names and addresses. According to DHS, different people in the facility may prepare the different reports; the facility may define the perimeters of each site differently; or the corporate structure or nomenclature may have changed from the time one report was submitted to the next reporting period.

³⁷ We compared the facility names and the city names used by companies that import and export ammonium nitrate to the facilities that reported to DHS.

³⁸ We counted any facility that imported or exported products with "ammonium nitrate" listed as part of the product description.

³⁹ We identified imports or exports of "ammonium nitrate," but the federal trade data did not provide the actual chemical composition of the fertilizer; therefore, we could not determine whether these facilities were potentially subject to CFATS reporting requirements.

Differences in Reporting Criteria, Including Exemptions, and Facilities' Failure to File Required Reports Also Prevent Full Identification of Facilities with Ammonium Nitrate

The total number of facilities with ammonium nitrate is also difficult to determine because of the variation in reporting criteria, including exemptions for some facilities from reporting to either their state or to DHS. For example, farmers could be exempt from reporting under both EPCRA and CFATS because EPCRA's reporting requirements do not apply to substances used in routine agricultural operations and DHS does not currently require certain agricultural producers to report their chemical holdings to DHS.⁴⁰ In addition, DHS's reporting threshold for ammonium nitrate fertilizer only applies to quantities held in transportable containers such as cylinders, bulk bags, bottles (inside or outside of boxes), cargo tanks, and tank cars.⁴¹ Also, EPCRA does not require retailers to report fertilizer held for sale to the ultimate customer. However, an August 2013 chemical advisory on ammonium nitrate issued jointly by EPA, OSHA, and ATF clarified that EPCRA requires fertilizer distributors to report ammonium nitrate that is blended or mixed with other chemicals on site. In addition, some facilities may not report to DHS or their state because they have amounts of ammonium nitrate that are below the applicable reporting thresholds.

Some facilities may not be included in either DHS's or states' data because they fail to submit their required reports, but the magnitude of underreporting is not known. DHS officials acknowledged that some facilities fail to file the required forms. The facility in West, Texas had not filed a CFATS report to DHS but, in 2012, this facility filed an EPCRA form with the state, reporting that it had 270 tons of ammonium nitrate. According to DHS officials, the agency does not know with certainty whether the West, Texas facility should have reported its ammonium nitrate to DHS because the agency did not visit the facility after the explosion and it does not know the manner in which the facility held its ammonium nitrate prior to the explosion. Following the explosion at the facility in West, Texas, DHS obtained data from the state of Texas and compared the state data to the facilities that reported to DHS. As a result

⁴⁰ See 42 U.S.C. § 11021(e)(5) and Notice to Agricultural Facilities About Requirement To Complete Chemical Security Assessment Tool Top-Screen, 73 Fed. Reg. 1640 (Jan. 9, 2008).

⁴¹ DHS's CFATS regulations provide that, in calculating whether a facility possesses a threshold amount of a chemical that poses a theft or diversion risk, the facility shall only include those chemicals that are in transportation packaging as defined by DOT regulations. 6 C.F.R. § 27.203(c). DHS considers ammonium nitrate fertilizer a chemical of interest because it can be stolen or otherwise diverted to make explosives.

of this data matching effort, DHS sent out 106 letters to other potentially noncompliant facilities in Texas. According to DHS, many of the Texas facilities that received the letter said they do not actually possess ammonium nitrate or do not meet the criteria to require reporting under CFATS. DHS has used EPA's Risk Management Program (RMP) database to try and identify such facilities holding other chemicals, but it cannot use the RMP database to identify all facilities with ammonium nitrate because ammonium nitrate is not covered by EPA's RMP regulations. In addition, DHS officials told us the agency is in the process of comparing its list of facilities that reported to DHS under the CFATS program to ATF's list of facilities that have federal explosives licenses and permits to identify potentially noncompliant facilities, but this effort had not been completed at the time of our review.

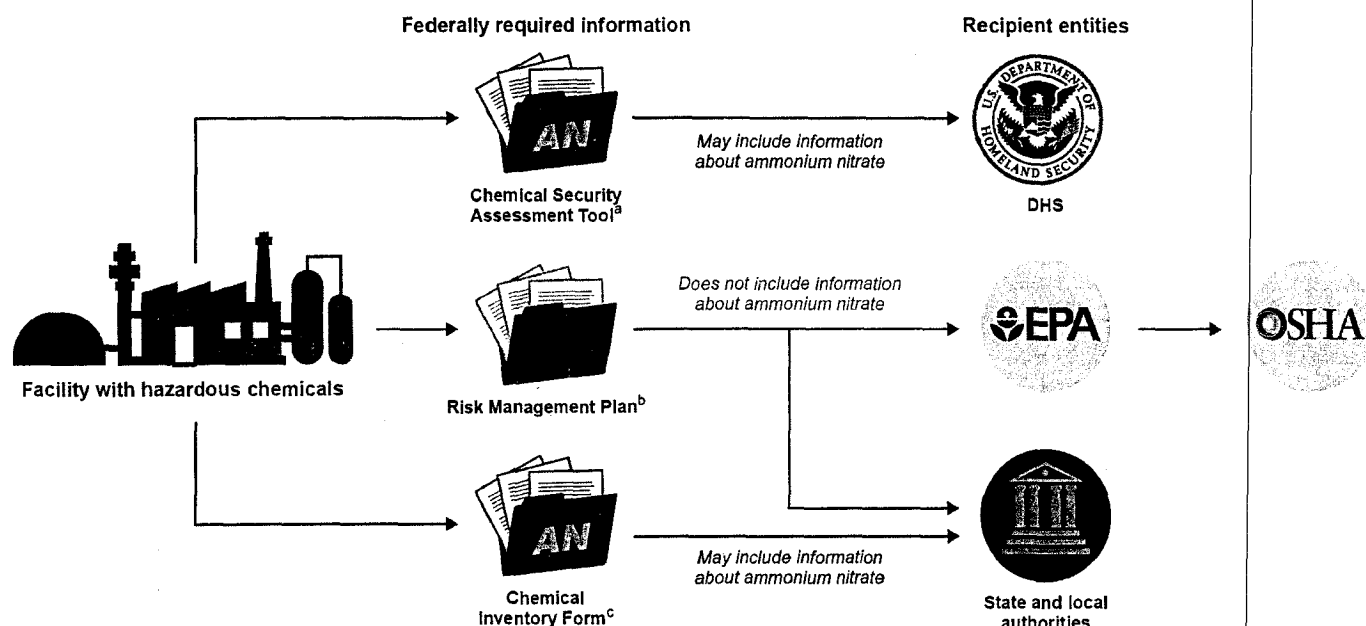
OSHA Lacks Access to Data on Facilities That Have Ammonium Nitrate

OSHA has limited access to data collected by other agencies to use in identifying facilities with ammonium nitrate. DHS does not currently share its CFATS data with OSHA, although DHS officials told us they were not aware of anything prohibiting DHS from doing so. While EPA shares data from its RMP with OSHA on a quarterly basis, the data do not include information on ammonium nitrate because ammonium nitrate is not covered by EPA's RMP regulations. As previously discussed, under section 312 of EPCRA, facilities are required to annually report information to state and local authorities on the types and quantities of certain hazardous chemicals present at their facilities, which may include ammonium nitrate. Facilities that possess reportable quantities of ammonium nitrate submit this information electronically or on paper forms, and the state and local entities maintain copies of these forms. However, according to agency officials, the EPCRA data are not shared directly with federal agencies, including OSHA, EPA, or DHS (see fig. 4). EPA officials, however, noted that EPCRA is primarily intended to provide information to state and local officials, not to other federal agencies. Any person may submit written requests to the designated state or local authority for information on individual facilities that may have ammonium nitrate, but lists of all facilities in a state that have submitted these data, including those that reported having ammonium nitrate, are not publicly available.⁴² In certain states we contacted, officials indicated that data on individual facilities could be requested from the state, but the requester

⁴² See 42 U.S.C. § 11022(e)(3).

would have to request data on specific facilities to obtain information on the chemicals they hold. OSHA officials cited the lack of access to data on facilities with ammonium nitrate as a reason they would have difficulty designing an inspection program to target such facilities.

Figure 4: Entities Receiving Federally Required Hazardous Chemical Reports from Facilities



Source: GAO review of federal regulations and interviews with federal officials.

^a DHS's Chemical Security Assessment Tool is used for submitting reports under DHS's CFATS program.

^b A risk management plan is required under EPA's RMP regulations.

^c The Chemical Inventory Form is used for submitting reports under section 312 of EPCRA. EPA publishes model forms; however, alternative formats are permitted provided they comply with EPCRA and EPA's regulations.

Note: Facilities are only required to report if they meet the reporting requirements for each program.

The University of Texas at Dallas has a database (called E-Plan) that contains EPCRA data from over half of the states for the 2012 reporting year, but federal agencies have made limited use of it. University staff originally developed the E-Plan database in 2000 with funding from EPA to facilitate EPCRA reporting and provide first responders rapid access to information on chemical facilities in emergency situations. In many local areas, first responders and emergency services personnel can use the E-Plan data when they prepare for and respond to emergencies such as

OSHA Has Not Focused Its Enforcement Efforts on Ammonium Nitrate and EPA Has Not Regulated It as a Hazardous Material

OSHA has regulations for the storage of ammonium nitrate, but the agency has not focused its enforcement resources on the use of ammonium nitrate by the fertilizer industry, which is a primary user. EPA, on the other hand, has regulations requiring risk management planning by facilities that have certain hazardous chemicals, but these regulations do not apply to ammonium nitrate.⁴³

OSHA's Regulations for Explosives and Blasting Agents List Substantive Requirements for the Storage of Ammonium Nitrate

OSHA's Explosives and Blasting Agents regulations—issued in 1971—include provisions for the storage of both explosives grade and fertilizer grade ammonium nitrate in quantities of 1,000 pounds or more.⁴⁴ OSHA based these regulations on two 1970 consensus standards developed by the National Fire Protection Association (NFPA).⁴⁵ Few significant changes have been made to these regulations since they were issued, although the National Fire Protection Association periodically reviews and updates its standards. OSHA's regulations include requirements that could reduce the fire and explosion hazards associated with ammonium nitrate, such as required fire protection measures, limits on stack size, and requirements related to separating ammonium nitrate from combustible and other contaminating materials. However, the regulations do not categorically prohibit employers from storing ammonium nitrate in

⁴³ In this review, we sought to identify federal regulations that apply to ammonium nitrate used as a fertilizer. Although the regulations we identified may also apply to ammonium nitrate used for other purposes (for example, as a blasting agent), additional federal regulations may apply in these contexts that are not discussed in this report.

⁴⁴ 29 C.F.R. § 1910.109(i). These provisions apply to the storage of ammonium nitrate in the form of crystals, flakes, grains, or prills including fertilizer grade, dynamite grade, nitrous oxide grade, technical grade, and other mixtures containing 60 percent or more ammonium nitrate by weight, but do not apply to blasting agents.

⁴⁵ NFPA is an independent nonprofit organization that convenes technical committees to develop national codes and standards intended to minimize the possibility and effects of fire and other risks. NFPA codes and standards are developed by consensus by committees composed of representatives from the government, industry, fire associations, and other organizations. Unlike OSHA's regulations, consensus standards are voluntary.

wooden bins and buildings.⁴⁶ In addition, if the facilities were in existence at the time the regulations were issued in 1971, OSHA's regulations allow the use of storage buildings not in strict conformity with the regulations if such use does not constitute a hazard to life.⁴⁷ Some of the provisions of OSHA's ammonium nitrate storage regulations are described in table 3.

Table 3: Ammonium Nitrate Storage Topics Addressed in Selected Provisions of OSHA's Explosives and Blasting Agents Regulations

Topic	Summary of Selected Provisions	Citation(s)
Who must comply	All persons storing, having, or keeping ammonium nitrate, and the owner or lessee of any building, premises, or structure in which ammonium nitrate is stored in quantities of 1,000 pounds or more. Applies to the storage of [solid] ammonium nitrate, including fertilizer grade, dynamite grade, nitrous oxide grade, technical grade, and other mixtures containing 60 percent or more ammonium nitrate by weight, but does not apply to blasting agents. Certain additional exceptions apply.	29 C.F.R. § 1910.109(i)(2)(i). 29 C.F.R. § 1910.109(i)(1)(i)(a). 29 C.F.R. § 1910.109(i)(1)(i)(b)-(c).
Storage building construction	The wall on the exposed side of a storage building within 50 feet of a combustible building, forest, piles of combustible materials and similar exposure hazards shall be of fire-resistive construction. In lieu of the fire-resistive wall, other suitable means of exposure protection such as a free standing wall may be used. All flooring in storage and handling areas shall be of noncombustible material or protected against impregnation by ammonium nitrate and shall be without open drains, traps, tunnels, pits, or pockets into which any molten ammonium nitrate could flow and be confined in the event of fire. The continued use of an existing storage building or structure not in strict conformity with [these provisions] may be approved in cases where such continued use will not constitute a hazard to life.	29 C.F.R. § 1910.109(i)(2)(iii)(c). 29 C.F.R. § 1910.109(i)(2)(iii)(d). 29 C.F.R. § 1910.109(i)(2)(iii)(e).

⁴⁶ All flooring in storage and handling areas must be of noncombustible material or protected against impregnation by ammonium nitrate. 29 C.F.R. § 1910.109(i)(2)(iii)(d). For bulk storage of ammonium nitrate, wooden bins protected against impregnation by ammonium nitrate are permissible. 29 C.F.R. § 1910.109(i)(4)(ii)(b).

⁴⁷ 29 C.F.R. § 1910.109(i)(2)(iii)(e).

Topic	Summary of Selected Provisions	Citation(s)
Size of piles and separation distances, when stored in bags, drums or other containers	<p>Minimum distance from walls (bags): 30 inches.</p> <p>Maximum pile height and width: 20 feet.</p> <p>Maximum pile length: 50 feet. Where the building is of noncombustible construction or is protected by automatic sprinklers the length of the piles is not limited.</p> <p>Minimum distance from the roof: 36 inches.</p> <p>Aisles shall be provided to separate piles by a clear space of at least 3 feet. At least one service or main aisle in the storage area shall be not less than 4 feet wide.</p>	<p>29 C.F.R. § 1910.109(i)(3)(ii)(b).</p> <p>29 C.F.R. § 1910.109(i)(3)(ii)(c).</p> <p>29 C.F.R. § 1910.109(i)(3)(ii)(d).</p>
Storage bin construction for bulk ammonium nitrate	Due to the corrosive and reactive properties of ammonium nitrate, and to avoid contamination, galvanized iron, copper, lead, and zinc shall not be used in a bin construction unless suitably protected. Aluminum bins and wooden bins protected against impregnation by ammonium nitrate are permissible. The partitions dividing the ammonium nitrate storage from other products which would contaminate the ammonium nitrate shall be of tight construction.	29 C.F.R. § 1910.109(i)(4)(ii)(b).
Separation from combustible and other contaminating materials	Ammonium nitrate shall be in a separate building or shall be separated by approved type firewalls of not less than 1 hour fire-resistance rating from storage of organic chemicals, acids, or other corrosive materials, materials that may require blasting during processing or handling, compressed flammable gases, flammable and combustible materials or other contaminating substances.	29 C.F.R. § 1910.109(i)(5)(i)(a).
Fire protection	<p>Not more than 2,500 tons of bagged ammonium nitrate shall be stored in a building or structure not equipped with an automatic sprinkler system.</p> <p>Suitable fire control devices such as small hose or portable fire extinguishers shall be provided throughout the warehouse and in the loading and unloading areas.</p> <p>Water supplies and fire hydrants shall be available in accordance with recognized good practices.</p>	<p>29 C.F.R. § 1910.109(i)(7)(i).</p> <p>29 C.F.R. § 1910.109(i)(7)(ii)(a).</p> <p>29 C.F.R. § 1910.109(i)(7)(ii)(b).</p>

Source: Ammonium nitrate storage provisions of OSHA's regulations, 29 C.F.R. § 1910.109(i).

Note: This table is not intended to be comprehensive; additional requirements or exceptions may apply to each topic that are not described here. States with their own OSHA-approved occupational safety and health program must have state standards that are at least as effective as OSHA's.

Recently, OSHA, EPA, and ATF jointly issued a chemical advisory that recommends that facilities store ammonium nitrate in non-combustible buildings.⁴⁸ Similarly, following the explosion in West, Texas, the National

⁴⁸ Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) *Chemical Advisory: Safe Storage, Handling, and Management of Ammonium Nitrate*, EPA 555-S-13-001 (Washington, D.C.: August 2013).

Fire Protection Association is considering changes to its ammonium nitrate storage provisions, which are part of its hazardous materials consensus standard, including restricting the use of wood to store ammonium nitrate.

In addition to storage requirements, OSHA's Hazard Communication regulations require that employers whose workers are exposed to hazardous chemicals, including ammonium nitrate, inform their workers of the dangers and train them to handle the materials appropriately. Employers are required to use labels, training, and safety data sheets to inform workers of chemical hazards in the workplace.⁴⁹ Safety data sheets are written documents with details on the hazards associated with each chemical, measures workers can take to protect themselves, actions workers should take in case of an emergency, and safety precautions for handling and storing the chemical.

OSHA Has Conducted Little Outreach to the Fertilizer Industry to Increase Awareness of Its Ammonium Nitrate Storage Regulations

Until the explosion in West, Texas, OSHA had not reached out to the fertilizer industry to inform its members of OSHA's requirements for the storage of ammonium nitrate fertilizer. An OSHA official told us the agency has not traditionally informed the fertilizer industry about these regulations. However, another OSHA official said agency officials met with industry representatives after the explosion at the facility in West, Texas and, based on that meeting, concluded that the fertilizer industry is "well aware" of the agency's storage regulations. OECD's Guiding Principles for Chemical Accident Prevention, Preparedness, and Response recommend that public authorities provide clear, easy-to-understand guidance to facilities on how regulatory objectives and requirements can be met.

OSHA recently published information about how the agency's Explosives and Blasting Agents regulations apply to ammonium nitrate fertilizer. The agency provides employers with training, technical assistance, and

⁴⁹ 29 C.F.R. § 1910.1200. The regulations do not include a list of chemicals and threshold amounts that would trigger application of the regulations. Rather, the regulations apply to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency, subject to certain exceptions. In its 2012 revisions to the Hazard Communication regulations, OSHA changed the name of material safety data sheets to safety data sheets. See Hazard Communication, 77 Fed. Reg. 17,574 (Mar. 26, 2012).

information through its website on a variety of safety and health topics.⁵⁰ Recently, OSHA updated its website to refer to its storage regulations for ammonium nitrate fertilizer. The August 2013 chemical advisory contains information on OSHA's ammonium nitrate storage regulations, stating that OSHA's Explosives and Blasting Agents regulations contain requirements for the storage of all grades of ammonium nitrate, including fertilizer grade ammonium nitrate. In addition, in February 2014, OSHA announced that the agency is working with the fertilizer industry to remind employers of the importance of safely storing and handling ammonium nitrate. OSHA published a letter on its website that provides employers with legal requirements and best practice recommendations for safely storing and handling ammonium nitrate. In the letter, OSHA states that the agency will enforce the requirements of 29 C.F.R. § 1910.109(i) for storage of ammonium nitrate, including at facilities in non-explosives industries. According to the announcement, fertilizer industry associations will share the letter with facilities across the country.

Fertilizer industry representatives we interviewed said that, prior to the explosion in West, Texas, they did not know that OSHA's ammonium nitrate storage regulations applied to the fertilizer industry, and they suggested that OSHA reach out to the fertilizer industry to help prevent another incident. Industry representatives explained that their understanding was based on a proposed rule published by OSHA in the Federal Register on April 13, 2007, which proposed revisions to the Explosives and Blasting Agents regulation.⁵¹ In that notice, OSHA proposed a change to the ammonium nitrate storage requirements "to clarify that OSHA intends the requirements to apply to ammonium nitrate that will be used in the manufacture of explosives." Although this proposed rule was never finalized, the industry representatives told us they relied on this statement to mean OSHA did not intend the storage requirements to apply to ammonium nitrate fertilizer.

In addition, we reviewed the safety data sheets developed by four U.S. producers of solid ammonium nitrate fertilizer and found that only one

⁵⁰ Section 21 of the OSH Act requires OSHA to establish programs to educate and train employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions, and to consult with and advise employers, employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses. 29 U.S.C. § 670(c).

⁵¹ Explosives, Part III, 72 Fed. Reg. 18,792 (Apr. 13, 2007).

company's sheet listed OSHA's Explosives and Blasting Agents regulations as applicable to the storage and handling of ammonium nitrate fertilizer.⁵² An industry representative who assists agricultural retailers with regulatory compliance said he reviewed the regulatory information sections in his clients' safety data sheets for ammonium nitrate fertilizer and none of them referred to OSHA's Explosives and Blasting Agents regulations. A representative from one national fertilizer industry association said it would be helpful if OSHA took additional steps to explain its interpretation of the applicable requirements and reach out to the fertilizer industry so that affected companies are better informed. A representative from another national agricultural industry group suggested that OSHA develop and disseminate a compliance assistance tool or checklist to ensure that facilities are aware of and in compliance with the applicable regulations.

The fertilizer industry is developing a voluntary program called Responsible Ag to promote compliance with federal regulations among fertilizer facilities. Officials from the Fertilizer Institute and the Agricultural Retailers Association told us they plan to consolidate federal regulatory requirements for fertilizer retail facilities into one comprehensive checklist and provide third party audits to retailers based on a checklist they have developed. In addition, officials with the Asmark Institute, a nonprofit resource center for agricultural retailers in the United States, said they developed their own compliance assessment tool for agricultural retailers. The Fertilizer Institute and the Agricultural Retailers Association selected the Asmark Institute to develop a database that will include information on audit reports and scores from the third party audits. This initiative will be modeled after a voluntary audit program in Minnesota for agricultural retailers to help them improve compliance with federal and state regulations. According to OSHA officials, OSHA has not been involved in the development of this industry initiative.

⁵² Manufacturers are required to develop safety data sheets for users of their hazardous chemical products, including ammonium nitrate fertilizer, under OSHA's Hazard Communication regulations. Although not required by OSHA, safety data sheets typically include a regulatory information section.

OSHA Has No Program for Targeted Inspections of Facilities with Ammonium Nitrate

Although OSHA has a national enforcement program that targets certain chemical facilities for inspection, this program does not systematically cover facilities with ammonium nitrate. OECD chemical safety guidance suggests public authorities periodically inspect the safety performance of hazardous facilities. OSHA conducts inspections of worksites, as authorized under the OSH Act.⁵³ As part of its enforcement efforts, OSHA randomly selects facilities for inspection as part of a national emphasis program for chemical facilities it initiated in 2011. However, these inspections are for facilities and chemicals covered under its Process Safety Management (PSM) regulations, which do not include ammonium nitrate. According to OSHA officials, facilities that blend and store ammonium nitrate fertilizer fall outside the scope of this national emphasis program. When we asked whether OSHA might expand its national emphasis program to focus on ammonium nitrate fertilizer facilities, officials said that the agency is not planning on targeting these facilities, in part because OSHA has no means of identifying them.⁵⁴

In addition, OSHA is not likely to target facilities with ammonium nitrate for inspection because of its limited resources, and because these facilities often do not meet OSHA's current inspection priorities. OSHA conducts inspections with its own personnel and the number of inspections OSHA and the states can perform each year is limited by the size of their inspection workforce. According to OSHA officials, OSHA and the states have about 2,200 inspectors who inspected about 1 percent of the 8 million covered employers in fiscal year 2012. Among OSHA's highest priorities for inspecting worksites are responding to major accidents and employee complaints. In fiscal year 2012, OSHA reported that 44 percent of the agency's inspections were unplanned inspections, which include inspections initiated in response to an accident or complaint. OSHA also targets certain industries for planned inspections that have high rates of workplace injury and illness. For example, OSHA reported that 55 percent of OSHA's planned inspections in fiscal year 2012 were inspections of worksites in the construction industry.

⁵³ 29 U.S.C. § 657.

⁵⁴ OSHA officials said the agency considers facilities that are classified as the highest risk category in EPA's RMP database to likely be subject to OSHA's PSM regulations. OSHA estimates that about 8,480 facilities are covered by its PSM regulations. As previously stated, although OSHA acquires data on facilities with hazardous chemicals from EPA's RMP database, that database does not include information on facilities with ammonium nitrate.

OSHA has rarely issued citations for violations of its ammonium nitrate storage regulations at fertilizer facilities. OSHA officials told us a citation for a violation of the agency's ammonium nitrate storage regulations was issued as the result of an inspection of a fertilizer facility only once before the explosion in West, Texas.⁵⁵ In that case, OSHA inspected a Florida-based fertilizer manufacturer in 1997 in response to a complaint, and cited the company for 30 violations, one of which was a violation of its ammonium nitrate storage requirements. In addition, according to OSHA officials, within the last 5 years, none of the 21 states that operate their own safety and health programs have cited any employers for improper storage or handling of ammonium nitrate.

OSHA Is Prohibited from Inspecting Some Facilities with Ammonium Nitrate That Have 10 or Fewer Employees

Under a provision regularly included in the annual appropriations act, OSHA is prohibited from conducting planned safety inspections of small employers—those with 10 or fewer employees—in certain low hazard industries, as determined by their injury and illness rates.⁵⁶ Although the number of facilities exempted from OSHA inspections under this provision is unclear, we found that, of the facilities that reported having ammonium

⁵⁵ In October 2013, OSHA cited the West, Texas facility and proposed penalties of \$118,300 for violations of its ammonium nitrate storage regulations and other OSHA regulations. According to OSHA officials, these citations were contested by the employer and were pending before the Occupational Safety and Health Review Commission. OSHA last inspected the West, Texas facility in 1985. At that time, OSHA fined the facility \$30 for violations of its regulations on storage and handling of anhydrous ammonia. Anhydrous ammonia is a colorless gas with a pungent, suffocating odor that can be compressed to make a liquid fertilizer. Anhydrous ammonia is considered a high health hazard because it is corrosive to the skin, eyes, and lungs. Anhydrous ammonia is also flammable and can explode under certain conditions.

⁵⁶ See, for example, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2012, Pub. L. No. 112-74, div. F, tit. I, 125 Stat. 786, 1059-60 (2011), which provides that, subject to certain exceptions, no appropriated funds shall be used to enforce any regulation under the OSH Act "with respect to any employer of 10 or fewer employees who is included within a category having a[n] ... occupational injury and illness rate ... less than the [most recent] national average," as published by the Department of Labor's Bureau of Labor Statistics. The exceptions include, among others, inspections for health hazards and unplanned inspections (such as those conducted in response to employee complaints or serious accidents). The Department of Labor's Bureau of Labor Statistics estimates workplace injury and illness rates by industry using North American Industry Classification System industry codes. To identify which industries are subject to OSHA's enforcement exemption, OSHA periodically updates one of its enforcement directives to list the most current North American Industry Classification System codes for each industry with an average workplace injury and illness rate below the national average.

nitrate to DHS as of August 2013, 60 facilities—about 4 percent of the 1,345 facilities that reported to DHS— reported having 10 or fewer employees and had an industry code with a lower than the average workplace injury and illness rate (see table 4).⁵⁷ As a result, according to OSHA officials, this provision could have hindered the agency's enforcement of its ammonium nitrate storage regulations at these facilities.

OSHA's fiscal year 2015 budget request asks Congress to consider amending OSHA's appropriation language to allow the agency to perform targeted inspections of small establishments that have the potential for catastrophic incidents, such as those with processes covered by OSHA's PSM or EPA's RMP regulations. In the budget request, OSHA states that the current appropriations language limits the agency's ability to conduct inspections, and neither the number of workers in a company nor low injury and illness rates is predictive of the potential for catastrophic accidents that can damage whole communities.

⁵⁷ For ammonium nitrate meeting the definition of ammonium nitrate regulated by the Department of Transportation as a Division 1.1 Explosive, facilities are generally required to report to DHS if they have 400 pounds or more contained in transportation packaging (if not contained in transportation packaging, the threshold is 5,000 pounds or more). For ammonium nitrate commonly used as a fertilizer, facilities are generally required to report to DHS if they have 2,000 pounds or more contained in transportation packaging.

Table 4: Number of Facilities Reporting More Than Threshold Amounts of Ammonium Nitrate to DHS That May be Exempt from Planned OSHA Safety Inspections Based on Industry Classification and Number of Employees

NAICS industry code	NAICS industry code description	Number of facilities with this code that are potentially exempt from programmed inspection based on reporting 10 or fewer employees
111140	Wheat Farming	2
111199	All Other Grain Farming	1
115112	Soil Preparation, Planting, and Cultivating	21
213113	Support Activities for Coal Mining	2
213115	Support Activities for Nonmetallic Minerals (except Fuels)	7
238910	Site Preparation Contractors	4
325120	Industrial Gas Manufacturing	4
325311	Nitrogenous Fertilizer Manufacturing	1
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	2
424690	Other Chemical and Allied Products Merchant Wholesalers	14
482112	Short Line Railroads	1
541380	Testing Laboratories	1
Total		60

Source: GAO review of DHS data reported as of August 2013 and industry codes listed in OSHA's directive regarding the Enforcement Exemptions and Limitations under the Appropriations Act, CPL 02-00-051, changes to Appendix A (effective February 22, 2013).

Note: Facilities are generally required to report to DHS if they have 400 pounds or more of ammonium nitrate meeting the definition of ammonium nitrate regulated by the Department of Transportation as a Division 1.1 Explosive or 2,000 pounds or more of ammonium nitrate commonly used as a fertilizer contained in transportation packaging. Facilities are listed in this table if they (1) reported a North American Industry Classification System (NAICS) code to DHS that had a workplace injury and illness rate below the national average as of 2011, and (2) reported having 10 or fewer employees.

Other OSHA and EPA Chemical Safety Regulations Do Not Apply to Facilities with Ammonium Nitrate

OSHA's PSM regulations for chemical safety do not cover ammonium nitrate.⁵⁸ In response to a requirement in the Clean Air Act Amendments of 1990, OSHA issued its PSM regulations in 1992 to help prevent accidents involving highly hazardous chemicals, including toxic, flammable, highly reactive, and explosive substances. These regulations apply to processes involving listed chemicals in amounts at or above threshold quantities. Employers subject to the PSM regulations are required to take specified steps, which include evaluating the hazards

⁵⁸ 29 C.F.R. § 1910.119. OSHA's list of highly hazardous chemicals is found at 29 C.F.R. § 1910.119, app. A.

associated with the process, as well as developing and implementing operating procedures, employee training, emergency action plans, and compliance audits at least every 3 years, among other requirements.⁵⁹ Despite the hazards of ammonium nitrate, this chemical is not listed as one of the chemicals subject to these regulations. OSHA officials told us they did not know why ammonium nitrate was not included when the regulation was first issued.⁶⁰ According to the August 2013 chemical advisory, although ammonium nitrate is not covered by the PSM regulations, the production or use of ammonium nitrate may involve PSM-listed chemicals, and the manufacture of explosives, which may involve ammonium nitrate, is covered by the regulations. In the late 1990s, OSHA staff drafted a proposal for expanding PSM regulations to cover ammonium nitrate and other reactive chemicals, but it was not reviewed by agency policy officials and was never published in the Federal Register for public comment.⁶¹

In addition, retail facilities, which may include facilities that store and blend fertilizer for direct sale to end users, are exempt from OSHA's PSM regulations. In the preamble to the final rule for the PSM regulations, OSHA stated that retailers are not likely to store large quantities of hazardous chemicals, and that a large chemical release would be unlikely. While the facility in West, Texas stored large quantities of anhydrous ammonia, a chemical covered by the PSM regulations, OSHA

⁵⁹ A process means any activity involving a highly hazardous chemical including any use, storage, manufacturing, handling, or the on-site movement of such chemicals, or a combination of these activities.

⁶⁰ According to OSHA officials, ammonium nitrate met the criteria the agency used to develop the list of chemicals subject to the PSM regulations, but ammonium nitrate was not included in the final regulations and the agency could not find documentation that would explain why. The preamble to the PSM final rule states that the agency decided to include substances with the two highest or most dangerous reactivity ratings from NFPA's Hazardous Chemicals Data document 49 (substances rated 3 or 4 by NFPA). Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents, 57 Fed. Reg. 6356, 6364 (Feb. 24, 1992). Ammonium nitrate has a reactivity rating of 3 from NFPA, but was not included in the list of chemicals subject to the PSM requirements in the final rule.

⁶¹ A description of proposed plans to amend the PSM regulations to expand the chemicals covered appeared on OSHA's spring 1997 regulatory agenda and was removed as of the fall 2001 agenda. OSHA commissioned a study that was completed in 2000 by CONSAD Research Corporation, which included a preliminary chemical and industry profile and an economic analysis of the impacts of adding reactive chemicals to the scope of the PSM regulations, including ammonium nitrate.

officials told us that the PSM regulations would not apply to the facility because it was a retail outlet.

In addition, other chemical safety regulations issued by EPA do not apply to facilities with ammonium nitrate.⁶² EPA's RMP regulations, issued in 1996 in response to a provision of the Clean Air Act Amendments of 1990, require covered chemical facilities to develop and implement a risk management program, but ammonium nitrate is not included on the list of chemicals that would trigger the requirements.⁶³ EPA's RMP regulations require facilities that handle more than threshold amounts of certain chemicals to implement a risk management program to guard against the release of chemicals into the air and surrounding environment. Covered facilities must develop their own risk management plans, and some facilities must also develop an emergency response program and conduct compliance audits, among other requirements. Covered facilities must also submit their risk management plans to EPA, including data on the regulated substances handled, and prepare a plan for a worst-case chemical release scenario.

Although EPA initially included high explosives in its list of regulated substances, which would include explosives grade ammonium nitrate, these explosives were subsequently removed from the list as a result of a legal settlement.⁶⁴ EPA officials also told us that fertilizer grade ammonium nitrate was not considered for its list for RMP because the agency had determined that it did not meet the criteria EPA established to implement the statute. Specifically, EPA officials told us that ammonium

⁶² According to Chemical Safety Board officials, in 2002, the CSB recommended that OSHA and EPA expand the PSM and RMP regulations to include reactive chemicals. Ammonium nitrate is considered a reactive chemical. For more information, see U.S. Chemical Safety and Hazard Investigation Board, Hazard Investigation: Improving Reactive Hazard Management, Report No. 2001-01-H (Washington D.C.: October 2002).

⁶³ 40 C.F.R. pt. 68. EPA's list of regulated toxic and flammable substances is found at 40 C.F.R. § 68.130.

⁶⁴ As part of settlement agreements resolving legal challenges to EPA's list by members of the explosives industry, EPA agreed to propose de-listing high explosives and the industry members agreed to develop and implement certain safety practices and to dismiss their legal challenge if the agency finalized the de-listing. EPA concluded that existing regulations and these industry practices were adequate to protect the public and finalized the de-listing. The industry members withdrew their legal challenge. List of Regulated Substances and Thresholds for Accidental Release Prevention; Amendments, 63 Fed. Reg. 640, 641 (Jan. 6, 1998).

nitrate could have been included in the RMP regulations, but ammonium nitrate was not included because it was not considered a toxic or flammable chemical, which were among the criteria EPA used when the agency first developed the regulations.⁶⁵ Accordingly, ammonium nitrate is not a covered chemical and EPA inspectors do not review facilities' risk management plans for this chemical during their RMP inspections. In 2006, EPA conducted an on-site inspection of the West, Texas facility, but the inspection focused on anhydrous ammonia, not ammonium nitrate.

Under the Executive Order, OSHA and EPA Are Seeking Information on Expanding Regulation and Oversight of Ammonium Nitrate, but Have Not Yet Proposed Any Regulatory Changes

In response to the August 2013 Executive Order on Improving Chemical Facility Safety and Security, OSHA and EPA, as part of the federal working group, have invited public comment on a wide range of policy options for overseeing the housing and handling of hazardous chemicals in the United States. Because they are still evaluating these options, the agencies have not issued any notices of proposed rulemaking. As directed by the Executive Order, in December 2013, OSHA issued a Request for Information on potential revisions to its PSM and related regulations, including its ammonium nitrate storage regulations.⁶⁶ OSHA's Request for Information also seeks public input on changing the agency's enforcement policy concerning the retailer exemption in the PSM regulations. In the Request for Information, OSHA states that "The West Fertilizer facility is not currently covered by PSM, however it is a stark example of how potential modernization of the PSM standard may include such facilities and prevent future catastrophe." In addition, as chair of one of the workgroups established to implement the Executive Order, OSHA solicited public input in January 2014 on federal policy options for improved chemical safety and security, including whether to expand OSHA's PSM regulations and EPA's RMP regulations to cover ammonium nitrate, among other options.⁶⁷ This solicitation also sought

⁶⁵ When it established its list of regulated substances, EPA included substances that met specified criteria for toxic, flammable, and explosive substances. For explosives, EPA selected substances that were given a certain explosive classification by the Department of Transportation. List of Regulated Substances and Thresholds for Accidental Release Prevention, 59 Fed. Reg. 4478 (Jan. 31, 1994). The Department of Transportation does not classify ammonium nitrate fertilizer as an explosive. 49 C.F.R. § 172.101.

⁶⁶ Process Safety Management and Prevention of Major Chemical Accidents, 78 Fed. Reg. 73,756 (Dec. 9, 2013).

⁶⁷ These policy options have been published to OSHA's website and public comments may be obtained through the website www.regulations.gov.

public input on whether federal agencies should examine the use of third party audits to promote safe storage and handling of ammonium nitrate. The solicitation defined third party audits as inspections conducted by independent auditors, retained by a chemical facility, who make process safety and regulatory compliance recommendations.⁶⁸ In an ongoing pilot project in selected states implemented in response to the Executive Order, federal agencies report improved coordination of inspections, such as sharing inspection schedules, cross-training inspectors, and inter-agency referrals of possible regulatory non-compliance.

Some Countries
Regulate and
Oversee Ammonium
Nitrate By Imposing
Requirements on
Facilities, Conducting
Inspections, and
Supporting Industry
Initiatives to Promote
Compliance

⁶⁸ In December 2012, the Administrative Conference of the United States, an independent federal agency dedicated to improving the regulatory process, published a recommendation on agency use of third-party programs to assess regulatory compliance. The recommendation refers to existing third-party inspection programs in which regulated entities generally contract with and pay third parties to carry out activities such as facility inspections. Regulatory agencies then adopt new roles in coordinating and overseeing these third parties. The Administrative Conference of the United States recommended that federal agencies consider various factors, such as resources and incentives to participate in a third-party inspection program, when deciding whether or not to develop such a program. It also acknowledges that certain statutory or other legal restrictions may preclude an agency from using third parties to conduct inspections and other compliance assistance activities. Adoption of Recommendations, 78 Fed. Reg. 2939, 2941-43 (Jan. 15, 2013).

Other Countries' Approaches Include Risk Assessments and Restrictions on Where and How Ammonium Nitrate Can Be Stored

According to foreign officials and government documents, Canada and the three EU countries we contacted—France, Germany, and the United Kingdom—require facilities with specified quantities of ammonium nitrate, including fertilizer grade ammonium nitrate, to assess its risk and develop plans or policies to control the risks and mitigate the consequences of accidents.⁶⁹ Like the United States, these countries are members of the OECD, which has published best practices for managing the risks of chemical accidents.⁷⁰ The OECD publication includes guidance on preventing and mitigating the consequences of chemical accidents, preparedness planning, and land use planning, among other things.⁷¹ For example, OECD's guidance recommends that regulatory authorities ensure that facilities with hazardous substances assess the range of possible accidents and require hazardous facilities to submit reports describing the hazards and the steps taken to prevent accidents.

With respect to assessing the risks of ammonium nitrate, according to Canadian officials and Canadian government documents, ammonium nitrate is regulated under the country's Environmental Emergency Regulations, which include risk management provisions. According to guidance published by Environment Canada, a federal-level regulatory agency, facilities that store 22 tons or more of ammonium nitrate must develop and implement an environmental emergency plan.⁷² In developing an emergency plan, facilities are directed to analyze the risks posed during the storage and handling processes for certain chemicals and adopt practices to reduce the risks, taking into consideration the impact a chemical accident would have on the surrounding community.

According to information provided by EU officials, facilities in the 28 member countries of the EU with specific quantities of ammonium nitrate

⁶⁹ We did not conduct an independent legal analysis to verify the information provided about the laws, regulations, or policies of the foreign countries selected for this study.

⁷⁰ The OECD is an intergovernmental organization in which representatives meet to coordinate and harmonize policies, discuss issues of mutual interest, and respond to international concerns. Currently, there are 34 member countries.

⁷¹ *OECD Guiding Principles for Chemical Accident Prevention, Preparedness and Response: Guidance for Industry (including Management and Labour), Public Authorities, Communities, and other Stakeholders* (OECD 2003).

⁷² This includes mixtures that are 60 percent ammonium nitrate by weight and that are in solid form and mixtures that are 81 percent ammonium nitrate by weight and that are in liquid form.

fertilizer are subject to the Seveso Directive, the EU legislation for facilities that use or store large quantities of certain toxic, explosive, and flammable substances, among other types of chemicals.⁷³ At a minimum, EU officials told us that EU member countries must comply with the Seveso Directive, although they have the option to adopt more stringent requirements. The legislation was adopted after a chemical accident in Seveso, Italy in 1976 that exposed thousands of people to the toxic chemical known as dioxin. Under the Seveso Directive, last updated in 2012, member countries are to require facilities with large amounts of ammonium nitrate fertilizer to notify the appropriate authority in their respective country, adopt a major accident prevention policy, and in some cases, develop a detailed safety report (see table 5).⁷⁴

⁷³ Currently, the Seveso Directive specifically covers four different types of ammonium nitrate, and reporting requirements for facilities vary depending on the quantity of ammonium nitrate they hold. The four types of ammonium nitrate covered are described in the Seveso Directive as: (1) ammonium nitrate fertilizers capable of self-sustaining decomposition, (2) fertilizer grade ammonium nitrate, (3) technical grade ammonium nitrate, and (4) "off-specs" material and fertilizers not fulfilling the detonation test. Threshold quantities vary depending on the type of ammonium nitrate. Fertilizer grade ammonium nitrate is defined in the Seveso Directive as straight ammonium nitrate-based fertilizers and ammonium nitrate-based compound/composite fertilizers that contain certain percentages of nitrogen from ammonium nitrate by weight. For more specific information, see Annex I of *Directive 2012/18/EU of the European Parliament and of the Council on the Control of Major-Accident Hazards Involving Dangerous Substances, Amending and Subsequently Repealing Council Directive 96/82/EC* (July 4, 2012). For purposes of this report, we focus on examples involving fertilizer grade ammonium nitrate.

⁷⁴ According to information provided by EU officials, the EU began regulating ammonium nitrate fertilizer in 1982. Subsequent to the adoption of the original Seveso Directive in 1982, there have been two replacement directives. Seveso II was adopted in 1996 and introduced requirements related to emergency planning and land use planning, among other revisions. Seveso II was amended in 2003 and changes were made to the descriptions of the ammonium nitrate categories and thresholds modifying the criteria for which facilities are covered under the Directive, among other changes. These changes were made based on an analysis of findings from the 2001 accident in Toulouse, France. Seveso III was adopted on July 4, 2012 and entered into force on August 13, 2012. EU member countries have until June 1, 2015 to implement the Seveso III Directive. Revisions include stricter standards for inspections to ensure more effective enforcement, and stricter requirements for providing information to the public, particularly those likely to be affected by a major accident, among other changes. This information was provided and/or reviewed by EU officials, for more details, see European Union, *Directive 2012/18/EU of the European Parliament and of the Council on the Control of Major-Accident Hazards Involving Dangerous Substances, Amending and Subsequently Repealing Council Directive 96/82/EC* (July 4, 2012).

Table 5: Selected Key Requirements and Corresponding Threshold Quantities in the European Union's Seveso III Directive for Facilities with Fertilizer Grade Ammonium Nitrate

Summary of directive requirement	Threshold quantity (in tons)
Notification Facilities are required to notify the appropriate authority in their country by submitting the names and quantities of chemicals present, activities performed, and details about neighboring establishments, including areas likely to increase the risk or consequences of a major accident.	1,378
Major accident prevention policy Facilities are required to document how they plan to prevent accidents and protect human health and the environment, including identifying and evaluating major hazards and planning for emergencies, among other activities, and submit the document to the appropriate authority in their country.	1,378
Safety report Facilities are required to produce a safety report demonstrating that major accident hazards and scenarios have been identified and that measures have been taken to prevent such accidents, and send the report to the appropriate authority in their country.	5,512

Source: The Seveso III Directive and information provided by EU officials.

Note: The Seveso III Directive was adopted on July 4, 2012 and entered into force on August 13, 2012. EU member countries have until June 1, 2015 to implement the Seveso III Directive.

Some countries, such as France and the United Kingdom, have other requirements for notifying authorities about the types and quantities of chemicals at facilities, including certain types of ammonium nitrate. In the United Kingdom, officials told us that facilities with 28 tons or more of certain types of ammonium nitrate must notify the Health and Safety Executive or local authority and the fire authorities.⁷⁵ French officials said that facilities with more than 276 tons of ammonium nitrate fertilizer must notify local authorities about their holdings.⁷⁶

⁷⁵ According to United Kingdom officials we interviewed, these requirements apply to grades of ammonium nitrate that are classified as oxidizers. The relevant regulations that require facilities to notify authorities are The Dangerous Substances (Notification and Marking of Sites) Regulations 1990. These regulations are primarily intended to alert fire authorities to any special firefighting hazards likely to exist at facilities. The Health and Safety Executive is a non-departmental United Kingdom government body.

⁷⁶ More specifically, according to officials, facilities with more than 276 tons but less than 551 tons of ammonium nitrate fertilizer that is more than 28 percent nitrogen from ammonium nitrate by weight and complies with EU standards, including passing a detonation resistance test, are required to notify local authorities. According to a French official, facilities with 11 tons or more of "off-spec" ammonium nitrate that does not comply with certain EU standards are classified as Seveso facilities.

The selected countries we reviewed generally reported having more centralized land use policies that specify where facilities with large quantities of ammonium nitrate should be located. For example, EU officials explained that the Seveso Directive requires member countries to develop and implement land use policies. Through controls on the siting of new Seveso facilities and new developments in the vicinity of such facilities, such as transportation routes and residential areas, they told us, member countries' policies aim to limit the consequences of chemical accidents for human health and the environment. In the United Kingdom, officials told us that facilities intending to store more than 1,102 tons of ammonium nitrate must first receive permission from their local planning authority to do so for relevant ammonium nitrate materials. They explained that these local planning authorities consider the hazards and risks to people in surrounding areas and consult with the Health and Safety Executive prior to granting permission to such facilities.

Three of the countries we reviewed—France, Germany, and the United Kingdom—restrict the use of wood for storage purposes in certain instances, according to information and documents provided by relevant officials. EU officials told us that the Seveso Directive does not prescribe how chemicals, including ammonium nitrate, should be stored. EU countries have developed their own technical standards or rely on industry standards for storing and handling ammonium nitrate. For example, according to information provided by French officials, after several accidents involving ammonium nitrate fertilizer, the government in France launched a working group to update existing ammonium nitrate regulations, including storage and handling requirements. They described the most recent regulations in France, issued in 2010, which include updated fire resistance provisions for new and existing facilities banning or restricting the use of materials such as wood and asphalt flooring for storing ammonium nitrate. Specifically, according to documents provided by French officials, the regulations direct facilities not to store ammonium nitrate fertilizer in structures with wood walls or sides.⁷⁷ According to an official in Germany, strict storage requirements for using certain types of ammonium nitrate fertilizer have led many farmers to voluntarily use an

⁷⁷ In this example, ammonium nitrate fertilizer refers to solid straight and compound fertilizers with specific percentages of nitrogen from ammonium nitrate by weight.

alternative type of fertilizer, known as calcium ammonium nitrate.^{78, 79} For example, she explained that, in Germany, certain kinds of ammonium nitrate must be divided into quantities of 28 tons prior to storage, and quantities are separated by concrete walls. In addition, certain ammonium nitrate and ammonium nitrate-based preparations must be separated from combustible materials, for example by brick or concrete walls. Guidance in the United Kingdom also recommends that buildings for storing ammonium nitrate should be constructed of material that does not burn, such as concrete, bricks, or steel, as does the recent advisory in the United States published by OSHA, EPA, and ATF.

Foreign Oversight Approaches and Industry Initiatives Include Guidance on Safe Practices, Requirements for Routine Inspections, and Voluntary Third Party Audit Programs

Guidance on Safe Practices. In the countries we reviewed, government entities developed materials to help facilities with ammonium nitrate fertilizer comply with safety regulations.⁸⁰ For example, in the United Kingdom, the government published guidance on storing and handling ammonium nitrate that illustrates proper storage practices and is written in plain language. The United Kingdom also developed a checklist that facilities can use as a compliance tool to determine whether they are meeting safe storage requirements. In Canada, Environment Canada issued a guidance document in 2011 so that facilities covered by its Environmental Emergency Regulations, including facilities with certain types and amounts of ammonium nitrate, can better understand and comply with regulatory requirements.

⁷⁸ The German official told us that German regulations apply to the storage, filling, and in-house transport of ammonium nitrate and ammonium nitrate-based preparations. In Germany, ammonium nitrate and ammonium nitrate-based preparations are classified into five groups based on their hazardous properties. For more information, see Germany's Hazardous Substances Ordinance, Federal Institute for Occupational Safety and Health, last amended July 15, 2013.

⁷⁹ According to an official we interviewed from an international fertilizer association, using calcium ammonium nitrate, which is a mixture of ammonium nitrate with limestone and/or dolomite, entails some incremental cost associated with the additional weight of the material added to the ammonium nitrate. According to a German official, under normal storage conditions, calcium ammonium nitrate fulfilling certain requirements is considered a safer fertilizer than straight ammonium nitrate fertilizer in terms of preventing accidental detonation, and large protection distances are used for straight ammonium nitrate fertilizer in case of accidental detonation. However, calcium ammonium nitrate fertilizer can still be used to make weapons, such as improvised explosive devices.

⁸⁰ OECD's *Guiding Principles for Chemical Accident Prevention, Preparedness and Response* directs public authorities to provide facilities with clear, easy to understand guidance on how regulatory requirements can be met.

The EU compiles information about chemical accidents and disseminates publications that include guidance on how facilities can prevent future incidents. Specifically, the EU has a system for reporting major accidents, including accidents involving ammonium nitrate, and tracks the information in a central database.⁸¹ For example, as of January 2014, this database contained information on several incidents involving ammonium nitrate dating back to 1986. EU researchers use this information to develop semi-annual publications in order to facilitate the exchange of lessons learned from accidents for both industry and government regulators. Each publication focuses on a particular theme such as a specific substance, industry, or practice, and summarizes the causes of related accidents and lessons learned to help prevent future accidents. EU officials told us that the next publication will be issued in the summer of 2014 and will focus on the hazards of ammonium nitrate in part as a result of the explosion that occurred in West, Texas.

Routine Inspections. In the EU, member countries are required to inspect facilities with large quantities of chemicals covered by the Seveso Directive, which includes facilities with ammonium nitrate.⁸² According to EU officials and documents, the EU's Seveso Directive requires covered facilities to be inspected either annually or once every 3 years, depending on the amount of hazardous chemicals a facility has—the greater the amount, the more frequent the inspection. EU officials also explained that member countries are required to report information to the European Commission every 3 years on how they are implementing the Seveso Directive requirements, including the number of facilities that have been inspected in their country.⁸³ According to a report published by the European Commission in June 2013, member countries reported in December 2011 that they had 10,314 covered facilities. According to the report, of those facilities to be inspected annually, 66 percent were

⁸¹ For more information, see the European Commission's Major Accident Reporting System <https://emars.jrc.ec.europa.eu/>.

⁸² OECD's *Guiding Principles for Chemical Accident Prevention, Preparedness and Response* directs public authorities to ensure safety requirements are met through appropriate inspection and enforcement measures, such as periodically inspecting safety performance in hazardous facilities.

⁸³ Under the new Seveso III Directive, member countries are required to report information to the European Commission every 4 years.

inspected, on average, in 2011, and of those facilities to be inspected once every 3 years, 43 percent were inspected, on average, in 2011.⁸⁴

Voluntary Initiatives and Third Party Audits. In the countries we reviewed, the fertilizer industry has actively promoted voluntary compliance with national safety requirements among facilities with ammonium nitrate fertilizer. For example, Fertilizers Europe, which represents the major fertilizer manufacturers in Europe, published guidance in 2007 for the storage and handling of ammonium nitrate-based fertilizers. This guidance recommends that buildings used to store ammonium nitrate-based fertilizers be constructed of non-readily combustible materials such as brick, concrete, or steel and that wood or other combustible materials be avoided, among other things.⁸⁵ Fertilizers Europe has also developed a compliance program that is a key requirement for membership, which consists of independent third party audits. As part of the program, it developed a self assessment tool for fertilizer manufacturers to use to identify gaps and possible improvements.

In the United Kingdom, the government and the fertilizer industry worked together in 2006 to develop a voluntary compliance program for facilities that manufacture and store fertilizers, among other activities, including ammonium nitrate-based fertilizers.⁸⁶ According to a United Kingdom official, the government provided some of the initial funding for this initiative, and the voluntary compliance program is now self financed. Although the program was initially focused on fertilizer security, it has evolved over the years to also address fertilizer safety in the United Kingdom. As part of the voluntary compliance program, participating facilities carry out risk assessments. These facilities are audited annually by an independent audit team comprised of specialists to determine whether they comply with industry and government standards, including standards for safely storing and handling ammonium nitrate fertilizer.

⁸⁴ These facilities are not just facilities with ammonium nitrate, but include facilities with more than threshold amounts of all of the chemicals covered by Seveso. For more information see European Commission, *Report on the Application in the Member States of Directive 96/82/EC on the control of major-accident hazards involving dangerous substances for the period 2009-2011* (Brussels, June 2, 2013).

⁸⁵ European Fertilizer Manufacturers' Association, *Guidance for the Storage, Handling and Transportation of Solid Mineral Fertilizers* (April 2007).

⁸⁶ The voluntary compliance program in the United Kingdom is known as the Fertilizer Industry Assurance Scheme.

Officials we interviewed in the United Kingdom told us that the government encourages and supports this industry initiative and that about 90 percent of facilities with ammonium nitrate in the United Kingdom, including those that have small quantities, are members of the voluntary program.⁸⁷ A United Kingdom official said, in his opinion, one would expect facilities participating in this industry initiative to be more likely to be found in compliance by the government when it conducts its own inspections. Furthermore, government officials, industry representatives, and program administrators meet twice a year to discuss how the program is being implemented and monitored.

Conclusions

Large quantities of ammonium nitrate are present in the United States, although the precise number of facilities with ammonium nitrate is not known. While incidents involving ammonium nitrate are rare, this chemical can react in ways that harm significant numbers of people and devastate communities. Facilities may be required, in certain circumstances, to report their chemical holdings to federal, state, and local authorities for security and emergency planning purposes. However, given the various reporting requirements and numerous reporting exemptions, some facilities may be uncertain about what to report to whom. Through the new Executive Order, federal agencies including DHS, EPA, and OSHA have the opportunity to work together on data sharing initiatives to help identify facilities with ammonium nitrate fertilizer. Such data sharing could help federal agencies identify facilities that are not complying with their regulations and enable OSHA to target high risk facilities with ammonium nitrate for inspection. Without improved coordination among the various federal and state agencies that collect data on facilities that store potentially hazardous chemicals, identifying facilities with ammonium nitrate for purposes of increasing awareness of the hazards and improving regulatory compliance will remain a challenge.

Although OSHA has requirements for storing ammonium nitrate fertilizer in its Explosives and Blasting Agents regulations that could reduce the likelihood of an explosion, OSHA has done little to ensure that the fertilizer industry, which is one of the primary users of ammonium nitrate, understands how to comply with its existing regulations. The August 2013

⁸⁷ The voluntary program in the United Kingdom does not apply to end users, such as farms.

chemical advisory and OSHA's February 2014 letter to facilities help clarify how OSHA's Explosives and Blasting Agents regulations apply to fertilizer facilities. However, without additional action by OSHA to promote awareness of how to comply with its regulations, fertilizer facilities may not know whether their practices are in compliance with OSHA's existing ammonium nitrate storage regulations or if changes need to be made. Moreover, unless OSHA takes steps to leverage additional resources to support its enforcement efforts, whether through enhanced targeting or coordination with other agencies or outside parties, beginning with encouraging voluntary compliance with ammonium nitrate regulations through various industry initiatives, it will not know the extent to which dangerous conditions at some facilities may continue to exist.

While much can be achieved under current regulations, OSHA and EPA's regulations contain gaps with respect to ammonium nitrate that may allow unsafe facilities to operate and poor planning to persist. OSHA has not significantly changed its ammonium nitrate storage regulations since they were issued in 1971, which means that fertilizer facilities may be adhering to outdated practices. For example, other countries we reviewed have revisited and updated their ammonium nitrate regulations and the National Fire Protection Association is considering making changes to its ammonium nitrate storage standards as a result of the explosion in West, Texas. In addition, as a result of incidents involving ammonium nitrate abroad, countries in the European Union and Canada require facilities to assess the risks of working with ammonium nitrate fertilizer, and the European Union requires member countries to routinely inspect facilities that have very large quantities of it. These approaches offer examples of how the risks of ammonium nitrate can be managed. Although increased regulation may be more burdensome to industry, without some means of ensuring that high risk facilities plan for and manage the risks associated with ammonium nitrate, such facilities may not be prompted to adequately address the risks the chemical creates for workers and neighboring communities.

Recommendations for Executive Action

1. To improve federal oversight of facilities with ammonium nitrate, we recommend that the Secretary of Labor, the Administrator of EPA, and the Secretary of Homeland Security, as part of their efforts as members of the Chemical Facility Safety and Security Working Group established by the Executive Order issued in August 2013, develop and implement methods of improving data sharing among federal agencies and with states.

-
2. We also recommend that the Secretary of Labor direct the Assistant Secretary for Occupational Safety and Health to take the following three actions:
 - Extend OSHA's outreach to the fertilizer industry. For example, OSHA could work with the fertilizer industry to develop and disseminate informational materials related to storage of ammonium nitrate.
 - Take steps to identify high risk facilities working with ammonium nitrate and develop options to target them for inspection.
 - Consider updating regulations for the storage of ammonium nitrate taking into consideration, as appropriate, other related standards and current practices.
 3. To strengthen federal oversight of facilities with ammonium nitrate, we recommend that the Secretary of Labor and the Administrator of EPA direct OSHA and EPA, respectively, to consider revising their related regulations to cover ammonium nitrate and jointly develop a plan to require high risk facilities with ammonium nitrate to assess the risks and implement safeguards to prevent accidents involving this chemical.
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Agency Comments and Our Evaluation

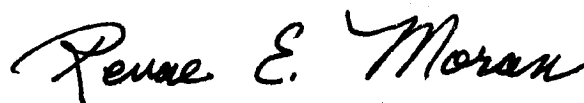
We provided a draft of this report to the Administrator of EPA, the Secretary of Homeland Security, and the Secretary of Labor for review and comment. We received written comments from EPA, DHS, and OSHA, which are reproduced in appendices I, II, and III. EPA, DHS, and OSHA agreed with our recommendation that the agencies improve data sharing and described their current efforts to address this issue as part of their implementation of the Executive Order on Improving Chemical Facility Safety and Security. The agencies stated that a status report by the Executive Order Working Group, which will be submitted to the President by the end of May, 2014, will include proposals for enhancing data sharing among federal agencies and with states.

OSHA agreed with our recommendation that the agency conduct additional outreach to the fertilizer industry, stating that additional outreach efforts will be identified in the Executive Order status report and that these efforts should help the fertilizer industry understand OSHA's safety requirements and industry best practices. OSHA also agreed with our recommendation that the agency target high risk facilities for inspection, stating that the agency is evaluating options for targeting high risk fertilizer facilities for inspection.

OSHA and EPA agreed with our recommendation that the agencies consider revising their regulations to cover ammonium nitrate. OSHA is currently reviewing public comments submitted in response to a Request for Information on a proposed revision to the agency's Process Safety Management and Prevention of Major Chemical Accidents regulations and the a request for public input on issues associated with Section 6 of the Executive Order, which addresses Policy, Regulation, and Standards Modernization. EPA stated that the agency will be publishing a Request for Information seeking public input on its proposed revision to process safety and risk management issues relevant to its Risk Management Program regulations, including coverage of ammonium nitrate. In addition, EPA, DHS, and OSHA provided technical comments, which we have incorporated as appropriate. We also provided portions of the draft report related to each of the four countries we reviewed to relevant officials from each country, and incorporated their technical comments, as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Administrator of EPA, the Secretary of Homeland Security, the Secretary of Labor, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staffs have any questions concerning this report, please contact me at (202) 512-7215 or moranr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix IV.



Revae Moran, Director
Education, Workforce, and Income Security Issues

Appendix I: Comments from the Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 1 2014

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Ms. Revae E. Moran
Director
Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Moran:

Thank you for the opportunity to review and comment on GAO's draft report, "Chemical Safety: Actions Needed to Improve Federal Oversight of Facilities with Ammonium Nitrate." Your draft report included three recommendations, two of which were addressed to the United States Environmental Protection Agency (EPA). The purpose of this letter is to provide our Agency response to these particular recommendations. EPA generally agrees with the findings, conclusions, and recommendations reached by the GAO.

As your draft report highlights, federal data provide insight into the number of facilities in the United States with ammonium nitrate but do not provide a complete picture because of reporting exemptions and other data limitations. Although federal law requires certain facilities to report their ammonium nitrate holdings to state and local authorities for emergency planning purposes, these data are not easily accessible to federal agencies because states are not required to report them to federal agencies, and each state determines how to share its own data. As part of implementing Executive Order 13650 - Improving Chemical Facility Safety and Security, which was issued in August 2013, federal agencies are exploring options for improving data sharing.

Your report also includes examples of approaches for overseeing ammonium nitrate facilities used in several foreign countries. Review of those countries' regulations indicates that facilities with specified quantities of ammonium nitrate are required to assess their risk and develop plans or policies to prevent chemical accidents.

GAO Recommendation

To improve federal oversight of facilities with ammonium nitrate, we recommend that the Secretary of Labor, the Administrator of EPA, and the Secretary of Homeland Security, as part of their efforts as members of the Chemical Facility Safety and Security Working Group established by the Executive Order issued in August 2013, develop and implement methods of improving data sharing among federal agencies and with states.

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Appendix I: Comments from the Environmental
Protection Agency

EPA Response

EPA agrees and, as part of the efforts under the Executive Order¹, the EPA, the Occupational Safety and Health Administration (OSHA), and the Department of Homeland Security (DHS) are clarifying the capabilities and needs of the various federal agencies for chemical facility data and developing a mechanism for aggregating chemical facility information from the various federal agencies and sharing it among the agencies. In the final report to the President, which is due by the end of May, the EO Working Group will provide more specific information on how and when these actions will be completed.

GAO Recommendation

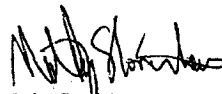
To strengthen federal oversight of facilities with ammonium nitrate, we recommend that the Secretary of Labor and the Administrator of EPA direct OSHA and EPA to consider revising their related regulations to cover ammonium nitrate and jointly develop a plan to require high risk facilities with ammonium nitrate to assess the risks and implement safeguards to prevent accidents involving this chemical.

EPA Response

EPA agrees and, as part of the efforts under the Executive Order, the EPA and OSHA are working together along with DHS, the Bureau of Alcohol, Tobacco, Firearms, and Explosives in the Department of Justice, and the Department of Agriculture to identify gaps in the current regulatory structure for ammonium nitrate and develop a plan to address those gaps. In the final report to the President, which is due by the end of May, the EO Working Group will provide more specific information on how and when these actions will be completed. In addition, EPA will be publishing a Request for Information seeking public input on process safety and risk management issues relevant to the Risk Management Program regulation, including coverage of ammonium nitrate.

In closing, thank you for the opportunity to review and respond to the draft GAO report. If you have any questions, please contact Kimberly Jennings at (202) 564-7998.

Sincerely,



Mathy Stanislaus
Assistant Administrator

Enclosure

¹ Executive Order 13650, Improving Chemical Facility Security and Safety (August 7, 2013).

Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

April 24, 2014

Revae Moran
Director, Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-14-274, "CHEMICAL SAFETY: Actions Needed to Improve Federal Oversight of Facilities with Ammonium Nitrate"

Dear Ms. Moran:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO's) work in planning and conducting its review and issuing this report.

As noted in the report, ammonium nitrate has been involved in several major chemical accidents over the past century. After the April 2013 incident involving the detonation of ammonium nitrate in West, Texas, that killed at least 14 people and injured more than 200 others, the President issued Executive Order (EO) 13650: "Improving Chemical Facility Safety and Security", in August 2013. The Department is pleased to note GAO's recognition that DHS is working with the Department of Labor's Occupational Safety and Health Administration (OSHA), and the Environmental Protection Agency (EPA), to identify ways of enhancing the safety and security of facilities that possess ammonium nitrate and other potentially hazardous chemicals, in accordance with EO 13650.

While ammonium nitrate has many significant and legitimate commercial uses, its potential to explode has made it an attractive ingredient used by terrorists in attacks domestically and abroad, and continues to present a security threat. Based on the myriad of safety and security concerns presented by ammonium nitrate, regulating facilities that possess ammonium nitrate is a shared responsibility that involves multiple federal agencies.

In preparing its report, GAO met with representatives from DHS's National Protection and Programs Directorate's (NPPD) Infrastructure Security Compliance Division, which is responsible for overseeing the security at high-risk chemical facilities under the Chemical Facility Anti-Terrorism Standards (CFATS) program. Under CFATS, regulatory requirements may be imposed upon chemical facilities that possess threshold levels of various chemicals of interest, one of which is ammonium nitrate. For this effort, GAO's engagement with DHS focused on the utility of CFATS data for determining how many facilities within the United

Appendix II: Comments from the Department
of Homeland Security

States possess ammonium nitrate. As discussed in the draft report, for a variety of reasons, such as the use of screening threshold quantities for determining regulatory requirements and existing statutory exemptions to CFATS for certain types of facilities, the data possessed by DHS is of limited utility in ascertaining the total number of facilities within the United States that possess ammonium nitrate.

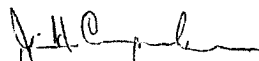
The draft report contained one recommendation directed to DHS with which the Department concurs. Specifically, GAO recommended that the Secretary of Labor, the Administrator of the EPA, and the Secretary of Homeland Security, as a part of their efforts as members of the Chemical Facility Safety and Security Working Group established by EO 13650:

Recommendation: Develop and implement methods of improving data sharing among federal agencies and with states.

Response: Concur. Since the establishment of the Chemical Safety and Security Working Group under EO 13650—which is tri-chaired by DHS, EPA, and OSHA—DHS has been working with federal and state partners to identify ways to enhance data sharing with facilities possessing ammonium nitrate. DHS and other members of the Chemical Safety and Security Working Group are in the process of developing a final report to the President on the status of ongoing and planned activities to implement EO 13650. That report, which is due to the White House in May 2014, will include, among other things, the working group's proposals for developing and implementing methods of improving data sharing among federal agencies and with states. Once the final report is submitted to the White House and is ready for public dissemination, DHS will share the report and the interagency group's proposals for improving data sharing with GAO. Estimated Completion Date (ECD): May 31, 2014.

Again, thank you for the opportunity to review and provide comment on this draft report. Technical comments were provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,



Jim H. Crumpacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Appendix III: Comments from the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



APR 30 2014

Ms. Revae E. Moran, Director
Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Moran:

Thank you for the opportunity to comment on the Government Accountability Office's (GAO) proposed report, *Chemical Safety: Actions Needed to Improve Federal Oversight of Facilities with Ammonium Nitrate*. The following comments are submitted on behalf of the Department of Labor's Occupational Safety and Health Administration (OSHA).

The purpose of the report was to determine how many facilities in the United States have ammonium nitrate, how OSHA and EPA regulate these facilities, and what approaches other countries use to oversee ammonium nitrate facilities. As a result of your findings, GAO recommends that agencies improve data sharing, that OSHA conduct outreach to the fertilizer industry and target high risk facilities for inspection, and that EPA and OSHA consider revising ammonium nitrate regulations.

OSHA has the authority to protect workers, including from hazards associated with ammonium nitrate. Specifically, OSHA's standard governing Explosives and Blasting Agents, 29 CFR 1910.109, has requirements for safe storage of ammonium nitrate. OSHA's Process Safety Management of Highly Hazardous Chemicals standard, 29 CFR 1910.119 (PSM), is intended to prevent or minimize consequences of catastrophic releases of highly hazardous chemicals, which are defined in the standard. The PSM standard does not identify ammonium nitrate among the highly hazardous chemicals that fall within the scope of the standard, and therefore the standard does not apply to facilities solely because ammonium nitrate is present.

As the report mentions, in August, 2013, the President signed Executive Order (EO) 13650, *Improving Chemical Facility Safety and Security*. The EO established a Working Group co-chaired by the Secretary of Homeland Security, the Administrator of the EPA, and the Secretary of Labor. The Working Group is tasked with improving the safety and security of U.S. chemical facilities, including those facilities that have ammonium nitrate.

You recommend that the Working Group develop and implement methods of improving data sharing among federal agencies and with states. As you know, the EO directs the Working Group to "produce a proposal for a coordinated, flexible data-sharing process which can be utilized to track data submitted to agencies for federally regulated chemical facilities..."¹ It also requires the Working Group to "identify and recommend possible changes to streamline and otherwise improve data collection to meet the needs of the public and Federal, State, local, and tribal agencies (including those charged with protecting workers and the public)..."² The Working Group's findings and recommendations will be detailed in a

¹ Improving Chemical Facility Safety and Security, Exec. Order No. 13650 (Section 5b), 78 Fed. Reg. 48,029 (Aug. 7, 2013).

² Improving Chemical Facility Safety and Security, Exec. Order No. 13650 (Section 5c), 78 Fed. Reg. 48,029 (Aug. 7, 2013).

2

270 Day Status Report due to the President at the end of May. We believe the actions recommended in the Status Report will satisfy your recommendation.

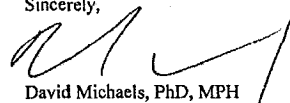
You also recommend that OSHA extend its outreach to the fertilizer industry. OSHA and the Working Group have already identified ways to reach out to the fertilizer industry to assist with understanding and compliance with OSHA requirements. As you mention, the Working Group issued a Chemical Advisory on the Safe Storage, Handling, and Management of Ammonium Nitrate and OSHA sent letters to facilities through industry organizations to clarify regulatory requirements. OSHA is also actively working with the Agricultural Retailers Association (ARA) to form an Alliance that would provide ARA members and others with information, guidance, and access to training resources on health and safety hazards in the agricultural supply industry. These and additional outreach actions, which will be identified in the EO 270 Day Status Report, should further serve to help the fertilizer industry understand OSHA's safety requirements, which have been in place since 1971, and highlight industry best practices.

In addition, you recommend that OSHA take steps to identify high risk facilities working with ammonium nitrate and develop options to target them for inspection. As you note in your report, OSHA has a National Emphasis Program (NEP) in place to reduce or eliminate the workplace hazards associated with the catastrophic release of highly hazardous chemicals. The NEP allows for programmed inspections to be conducted in facilities that are known to OSHA as having a risk of catastrophic releases. Because ammonium nitrate is not covered by our PSM standard, many fertilizer facilities would not have been targeted for programmed inspections. As your report mentions, OSHA has limited resources and must use inspection targeting judiciously to ensure we are able to visit the highest risk employers. Prior to the incident at West, TX in 2013, OSHA was not aware of significant issues in the fertilizer industry that would have led us to develop targeting for fertilizer facilities. Following the incident at West, TX, we are evaluating options for targeting high risk fertilizer facilities for programmed inspections.

In closing you recommend that OSHA update and expand regulations for ammonium nitrate to be consistent with other related standards and practices. Further, you recommend that OSHA and EPA consider revising their related regulations to cover ammonium nitrate and jointly develop a plan to require high risk facilities with ammonium nitrate to assess risks and implement safeguards to prevent incidents. As you are aware, OSHA recently issued a Request for Information (RFI) on Process Safety Management and Prevention of Major Chemical Accidents and the EO Working Group published a public request for feedback on issues associated with Section 6 of the EO, which addresses Policy, Regulation, and Standards Modernization. Both of these documents requested input on policy and regulatory changes to improve ammonium nitrate safety. OSHA is currently reviewing the submitted comments and we will use this information to inform our decisions on regulatory updates and revisions.

OSHA appreciates the time and effort that GAO took to review federal oversight of ammonium nitrate safety. We believe that we have already made significant improvements to reduce the likelihood of ammonium nitrate incidents like that at West, TX. We will continue to improve ammonium nitrate safety through both OSHA and EO Working Group actions.

Sincerely,



David Michaels, PhD, MPH

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Revae Moran, Director, (202) 512-7215 or moranr@gao.gov

Staff Acknowledgments

In addition to the contact named above, Betty Ward-Zukerman, Assistant Director; Catherine Roark, Analyst in Charge, Theodore Alexander, Nancy Cosentino, Joel Marus, and Meredith Moore, made significant contributions to all phases of the work. Also contributing to this report were Hiwotte Amare, Jason Bair, James Bennett, Susan Bernstein, Stephen Caldwell, Sarah Cornetto, Charles Johnson, Jr., Kathy Leslie, Ashley McCall, Sheila McCoy, Jean McSween, John Mortin, Vincent Price, Stephen Sanford, Sushil Sharma, Linda Siegel, Maria Stattel, and Kathleen van Gelder.

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

WILLIAM ROBERT, MAJORITY STAFF DIRECTOR
PAK EARI, REPUBLICAN STAFF DIRECTOR

September 24, 2014

Nick DiPasquale
Director, Chesapeake Bay Program
EPA
410 Severn Ave., Suite 112
Annapolis, Maryland 21403

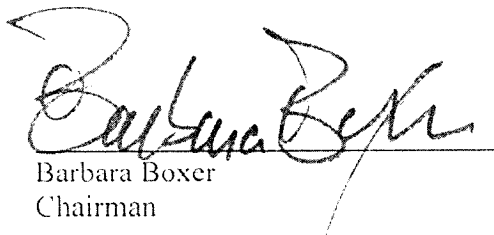
Dear Mr. DiPasquale:

Thank you for appearing before the Committee on Environment and Public Works on September 8, 2014, at the hearing entitled, "Examining the Strategy for Achieving the Goals of the New Voluntary Chesapeake Bay Watershed Agreement." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

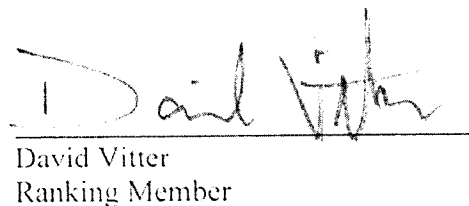
Enclosed are questions for you that have been submitted by Senator Vitter for the hearing record. Please submit your answers to these questions by COB October 8, 2014, to the attention of Drew Kramer, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to Drew_Kramer@epw.senate.gov. To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Ted Illston of the Majority Staff at (202) 224-8832, or Brandon Middleton of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,



Barbara Boxer
Chairman



David Vitter
Ranking Member

**Environment and Public Works Committee Hearing
September 8, 2014
Follow-Up Questions for Written Submission**

Questions for DiPasquale

Questions from:

Senator David Vitter

1. The U.S. Environmental Protection Agency (EPA) has previously promised members of Congress and the American public that it would develop a cost-benefit analysis for the Chesapeake Bay Total Maximum Daily Load (TMDL). To date, however, no such analysis has been provided by EPA. What explains EPA's failure to provide a cost-benefit analysis for the Chesapeake Bay TMDL? Doesn't this failure affect EPA's credibility amongst those counties and stakeholders who are required to alter their land management practices in order to comply with the TMDL?
2. In 2009, the Chesapeake Bay Foundation and other plaintiffs sued EPA, claiming that progress under the Chesapeake 2000 Agreement was too slow, and that the voluntary goals in the Agreement were in fact mandatory duties under the Clean Water Act. In other words, rather than a mutual commitment to work together on Chesapeake Bay restoration issues, the lawsuit painted the Chesapeake 2000 Agreement as containing inflexible standards which bound the Chesapeake states to a nonnegotiable mandate.

Instead of defending the voluntary nature of the Chesapeake 2000 Agreement, EPA entered into a settlement agreement with the plaintiffs which obligated the agency to develop the Bay TMDL. As Peyton Robertson with NOAA previously indicated, the Bay TMDL "fundamentally altered the nature" of the Chesapeake Bay Program because "[y]ou can't reasonably argue that it is a voluntary approach anymore."

Given this history, and the purported voluntary nature of the 2014 Chesapeake Bay Watershed Agreement, several questions arise:

- a. By entering into the 2014 Chesapeake Bay Watershed Agreement, have the states inadvertently laid the groundwork for a future lawsuit against EPA over the alleged failure to accomplish the Agreement's goals in a timely manner?
 - b. If litigation occurs which claims that the 2014 Chesapeake Bay Watershed Agreement creates mandatory duties for EPA and the states, will EPA defend the voluntary nature of the Agreement?
 - c. Do you agree that there is a lag time between implementing conservation measures and observing local water quality improvements, and that the environmental improvements we are seeing in the Chesapeake Bay today are the result of voluntary efforts initiated several years ago?
3. Environmental literacy is a major component of the 2014 Chesapeake Bay Watershed Agreement. According to the Agreement:

Each participating Bay jurisdiction should develop a comprehensive and systemic approach to environmental literacy for all students in the region that includes policies,

practices and voluntary metrics that support the environmental literacy Goals and Outcomes of this Agreement.

Does EPA expect that environmental literacy curricula will also include a discussion of how private property rights serve as a backbone to the Chesapeake region's economy?

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
MAIL ROOM 2051-2052
PHONE 202-950-2052
October 1, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

A recent water emergency in Toledo, Ohio left 500,000 people, including families, hospitals, and businesses, unable to utilize drinking water provided by the public water system without risking negative health effects. We are deeply concerned by any threat to the water supply, and we appreciate the time and information your agency has devoted as we seek answers. Peter Grevatt, the Director of the Environmental Protection Agency's (EPA) Office of Ground Water and Drinking Water (OGWDW), and his staff continue to be a valuable resource as we seek long-term solutions to protect public drinking water from Microcystin and other harmful cyanotoxins.

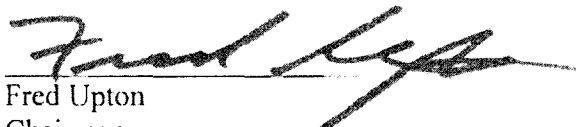
Mr. Grevatt indicates that EPA plans to release a health advisory on Microcystin-LR sometime next spring. While we hope the advisory will be released as soon as possible, we appreciate that it is first going through an independent peer review process to ensure the advisory is based on accurate available data and sound science. In the meantime, as a follow up to our meeting, we have several questions:

1. What types of information will the advisory include, and what will be the level of detail? What should states, municipalities, and residents anticipate gaining from this advisory?
2. What is the threshold level of exposure from a public drinking water system at which Microcystin, and its variant Microcystin-LR, poses a risk to human health? Is there a scientific consensus on the threshold human exposure for Microcystin generally, or Microcystin-LR?
3. Will EPA recommend techniques to treat the water to the specified health advisory level or to a level within a certain range?

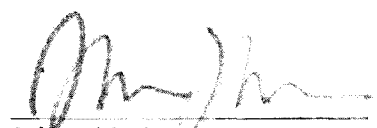
4. We understand that ELISA, a testing method many municipalities use, is a screening tool that tests only for Microcystin in general, while the LC-MS/MS testing method is a more robust, higher-cost method that tests for specific variants such as Microcystin-LR.
 - Will the EPA advisory recommend using LC-MS/MS testing? If so, what challenges will states and municipalities face in accessing and effectively using LC-MS/MS technology? Are there more cost-effective tests that offer comparable efficiency to LC-MS/MS?
 - What is the current process for an entity to become U.S. EPA certified in LC-MS/MS testing?
5. EPA has indicated that algal toxins will be included in the agency's upcoming Unregulated Contaminant Monitoring Rule (UCMR), which is due to be proposed in 2016 and finished in 2018. At this point, does EPA expect Microcystin-LR to be on that list and what would preclude it from being listed sooner?

Drinking water systems must be able to efficiently and cost-effectively monitor and treat harmful algal contaminants, not only in the Great Lakes, but also in other communities using surface water as their source water. These are imperatives for public safety and health. We appreciate the EPA's work on this issue and look forward to collaborating with you, Mr. Grevatt, and officials in Ohio as we move forward. If you have any questions regarding this letter please contact David McCarthy with the Committee staff at (202) 225-2927. Thank you and we look forward to your response.

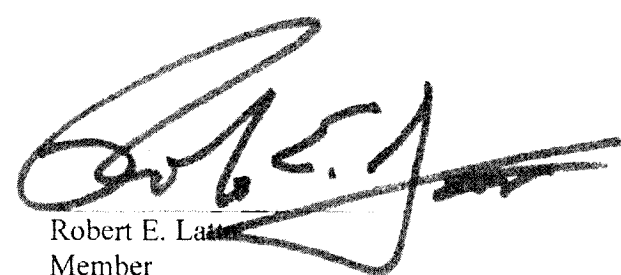
Sincerely,



Fred Upton
Chairman



John Shimkus
Member



Robert E. Latta
Member

MARISANA BOXER
U.S. SENATOR

COMMITTEE ON
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(202) 224-3752
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October 16, 2014

Ms. Laura Vaught
Associate Administrator for Congressional and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue NW Room 3426 Arn
Washington, DC 20460-0001

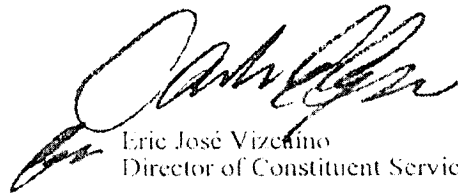
Dear Ms. Vaught:

Enclosed, please find a copy of the correspondence Senator Boxer received from (b) (6) regarding a petition filed with the U.S. Environmental Protection Agency.

I am forwarding the attached for your review and consideration. Any information you can provide in response to the concerns expressed by Mr. Noell will be most appreciated.

Thank you for your assistance in this matter. Please respond to Senator Boxer's Oakland office, attention: Madeline Pearce.

Sincerely,



Eric José Vizecino
Director of Constituent Services

EJV:mp
Enclosure
cc: Mr. (b) (6)

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United States Senator Barbara Boxer

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Date: 9/2/2014

To begin processing your case, please complete all of the following information:

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First Name: _____

Last Name: _____

Date of Birth: _____

Social Security Number: _____

Address: _____

City: _____

State: _____

Email: _____

Phone Number: _____

Federal agency with which you need help: EPA and Army Corp of Civil Engineer

Briefly explain the problem or the information desired* (attach additional pages if necessary):

Myself and my neighbors petitioned EPA NANCY K STONER and ARMY CORP of Engineers for redress of flooding of home and destruction of domestic water supply caused by improper exemption under 40 CFR 464.1 A § 336.5C 1344(f) the normal farming exemption improper Application of this exemption has deprived us our riparian rights caused severe damage to our homes and farms and threatens our health and safety. IT has impoverished us.

*Please include copies of any relevant documentation related to your request as attachments to this form

Also include the following information if appropriate.

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Date filed: _____

USCIS Receipt#: _____

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HOUSING:

Lender Name: _____

Loan Number: _____

Property Address: Same as above ☐

MILITARY:

Branch of Service: _____

Rank: _____

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Attention: Casework Department
United States Senator Barbara Boxer
70 Washington Street, Suite 203
Oakland, CA 94607

Phone: 510.286.8537 Fax: 202.228.6866

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**THE WHITE HOUSE OFFICE
REFERRAL**

October 15, 2014

TO: ENVIRONMENTAL PROTECTION AGENCY

ACTION COMMENTS:

ACTION REQUESTED: DIRECT REPLY W/COPY

REFERRAL COMMENTS:

DESCRIPTION OF INCOMING:

ID: 1151963

MEDIA: EMAIL

DOCUMENT DATE: October 08, 2014

TO: PRESIDENT OBAMA

FROM: THE HONORABLE EDWARD MARKEY
UNITED STATES SENATE
WASHINGTON, DC 20510

SUBJECT: EXPRESSES CONCERN ABOUT THE 2014 RENEWABLE VOLUME
OBLIGATIONS (RVOs) UNDER THE RENEWABLE FUEL STANDARD (RFS)
PROPOSED BY EPA

COMMENTS:

**PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT,
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**THE WHITE HOUSE
DOCUMENT MANAGEMENT AND
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DATE RECEIVED: October 14, 2014

CASE ID: 1151963

NAME OF CORRESPONDENT: THE HONORABLE EDWARD MARKEY

SUBJECT: EXPRESSES CONCERN ABOUT THE 2014 RENEWABLE VOLUME OBLIGATIONS (RVOs)
UNDER THE RENEWABLE FUEL STANDARD (RFS) PROPOSED BY EPA

ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	ACTION		DISPOSITION		
		CODE	DATE	TYPE RESPONSE	CODE	DATE COMPLETED
LEGISLATIVE AFFAIRS	KATIE FALLON	ORG	10/15/2014			

ACTION COMMENTS:

✓ ENVIRONMENTAL PROTECTION AGENCY R 10/15/2014

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REFER QUESTIONS TO DOCUMENT TRACKING UNIT (202)-456-2590

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United States Senate

WASHINGTON, DC 20510

October 8, 2014

The Honorable Barack Obama
President
United States of America
The White House
Washington, DC

Dear Mr. President,

We are grateful for your leadership in addressing the threat of climate change in America and around the world. Your proposal to address carbon pollution from existing power plants is a critical step that our nation must take to lead the world in combatting climate change. We look forward to continuing to work with you on this proposal and the rest of your Climate Action Plan.

We must use every tool at our disposal to address climate change. We are writing today to raise our concerns about the 2014 Renewable Volume Obligations (RVOs) under the Renewable Fuel Standard (RFS) proposed by the Environmental Protection Agency (EPA). If adopted, this rule would increase, not decrease, carbon pollution.

The RFS is a critical piece of our nation's climate mitigation policies. It is helping to break the oil sector's monopoly over our nation's liquid fuel supply by opening the market to competition from America's growing renewable fuel industry, bringing low carbon cellulosic, advanced biofuels and biomass-based diesel to market. Just this month, two new cellulosic biorefineries came online producing the lowest carbon motor fuel in the world.

Yet, in the rule now under final interagency review, EPA is proposing changes that will have serious repercussions. EPA's proposed 2014 RVO reduces the amount of renewable fuel required for blending to levels below those actually blended in 2013. EPA also relies on a questionable reading of the statute that would allow the oil industry to escape its obligations under the RFS by simply blocking or limiting the distribution of renewable fuel blends to consumers. Rather than fostering competition and innovation in the transportation fuel market, the rule would give power to the oil industry to impede the development of its competition. Should this proposal be adopted, our consumption of oil would rise, yielding an immediate increase in carbon pollution in 2014 and beyond.

A recent analysis shows that the proposed rule would increase net carbon pollution by 28.2 million metric tons in 2014 alone compared to what could be achieved using the methodology that EPA has previously used to set annual RVOs.¹ This amount of pollution is equivalent to the emissions of almost 6 million additional vehicles. Carrying

¹ Erickson Brent, Carr Matt, and Winters Paul. Industrial Biotechnology. April 2014, 10(2): 57-63. doi:10.1089/ind.2014.1508.

The Honorable Barack Obama
October 8, 2014
Page 2 of 2

the EPA's proposed approach forward in future years would trigger even larger increases in heat-trapping emissions. By the year 2022, we could miss out on nearly 1 billion metric tons of cumulative carbon pollution reductions.


More importantly, this country's leading innovators in the advanced and cellulosic biofuels sector have expressed their concerns—including in a September letter to you—that EPA's new methodology increases supply-chain and policy risk for investors so much that it will drive the further development of this low carbon industry to South America and Asia. EPA's proposed rule would not only increase carbon pollution, but would also derail our efforts to attract investment to critical U.S. innovation markets and drive the development of fuels that further reduce carbon pollution in the long-term.

We are aware of concerns about the potential market and policy implications of aggressive RFS targets. But the country cannot afford to address these challenges by imposing unreasonable cuts to the program and adopting a new administrative approach that would send investment overseas by providing loopholes for oil companies to escape obligations under the Clean Air Act.

As champions of your efforts to combat climate change and develop new innovation markets in the United States, we would look forward to the opportunity to discuss our concerns about the RFS with you in more detail. We are confident that we can find a path forward that protects our vital environmental and economic interests.

Sincerely,


Edward J. Markey
United States Senator


Barbara Boxer
United States Senator

cc: Shaun Donovan, Director, Office of Management and Budget

United States Senate

WASHINGTON, DC 20510

November 21, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator McCarthy:

We write to request information on the steps the Environmental Protection Agency (EPA) is taking to address the risks posed by pesticides to pollinator health, as well as EPA's planned actions in response to the President's June 2014 memorandum outlining a federal strategy to protect the health of honey bees and other pollinators. Since beekeepers began reporting massive die-offs of bees in 2006, the health of our nation's honey bees and other insect pollinators has been a continuing source of concern. The President's actions highlight the importance of pollinators to our economy, as well as the many factors that are affecting their health, and we urge you to take steps that are commensurate with the importance of this issue to food production, the economy, and the environment.

EPA has an important role in protecting our nation's pollinators through its administration of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under FIFRA, the EPA is required to review applications for pesticide registrations and to only approve the use of a pesticide if "it will perform its intended function without unreasonable adverse effects on the environment" and "when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment."¹ The phrase "unreasonable adverse effects on the environment" means "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide."² Additionally, EPA is required to reassess the use of pesticides every 15 years through the registration review process.³ The EPA Administrator can also cancel or change a registration through a special review process if she determines that the pesticide causes unreasonable adverse effects to the environment.⁴ The Administrator has the authority to immediately suspend a pesticide's registration when

¹ 7 U.S.C. § 136a(c)(5).

² 7 U.S.C. § 136(z)(bb).

³ 7 U.S.C. § 136a(g).

⁴ 7 U.S.C. § 136d(b).

“necessary to prevent an imminent hazard during the time required for cancellation or change in classification proceedings.”⁵

It is well established that bees and other pollinators fulfill an essential role in American food production and the economy. Approximately one in three bites of food benefits from honey bee pollination.⁶ The President’s memorandum stated that pollinators provide \$24 billion a year to the economy, \$15 billion of which is contributed by honey bees.⁷ Many crops almost entirely rely on animals for pollination, including almonds, cranberries, and apples.⁸ Almonds, for example, are completely dependent on honey bees for pollination, resulting in a \$2.8 billion contribution.⁹

Pesticides, including neonicotinoids, are one of many threats to honey bees and other pollinators.¹⁰ Direct exposure to lethal levels of neonicotinoids was dramatically demonstrated in June 2013, when 50,000 dead bumble bees were found after a product containing the neonicotinoid dinotefuran was sprayed on linden trees that were in bloom.¹¹ Lower exposure levels may lead to a variety of sub-lethal effects including impacts to navigation, cognitive abilities, reproduction, and disease resistance.¹² Not only do neonicotinoids pose a threat to pollinators, there are also studies considering the potential impact of neonicotinoids on humans that include evidence of neonicotinoid residues on food¹³ and neurological impacts on rats.¹⁴ Additional studies illustrate the potential effect of neonicotinoids on vertebrate wildlife, including birds.¹⁵

⁵ 7 U.S.C. § 136d(c).

⁶ *Honey Bees and Colony Collapse Disorder*, USDA, Agricultural Research Service, <http://www.ars.usda.gov/News/docs.htm?docid=155724&abs>.

⁷ Presidential Memorandum—Creating a Federal Strategy to Promote the Health of Honey Bees and Other Pollinators (June 20, 2014) [hereinafter Presidential Memorandum].

⁸ Renée Johnson & M. Lynne Corn, Congressional Research Service, *Bee Health: Background and Issues for Congress*, 5, 7 tbl.1 (Apr. 9, 2014).

⁹ *Id.* at tbl.1.

¹⁰ *Pollinator Health Concerns*, EPA, <http://www2.epa.gov/pollinator-protection/pollinator-health-concerns>.

¹¹ *The Wilsonville Bee Kill*, Xerces Society for Invertebrate Conservation, <http://www.xerces.org/the-wilsonville-bee-kill>.

¹² J.P. van der Sluijs et al., *Conclusions of the Worldwide Integrated Assessment on the Risks of Neonicotinoids and Fipronil to Biodiversity and Ecosystem Functioning*, Environmental Science and Pollution Research (forthcoming), available at <http://www.jtsp.info/worldwide-integrated-assessment>; Jennifer Hopwood et al., *Are Neonicotinoids Killing Bees?* 11 (2012).

¹³ Mei Chen et al., *Quantitative Analysis of Neonicotinoid Insecticide Residues in Foods: Implication for Dietary Exposures*, Journal of Agricultural and Food Chemistry (2014).

¹⁴ Junko Kimura-Kuroda et al., *Nicotine-Like Effects of the Neonicotinoid Insecticides Acetamiprid and Imidacloprid on Cerebellar Neurons from Neonatal Rats*, PLoS ONE, Feb. 2012, 1 (2012); Mohamed B. Abou-Donia, *Imidacloprid Induces Neurobehavioral Deficits and Increases Expression of Glial Fibrillary Acidic Protein in the Motor Cortex and Hippocampus in Offspring Rats Following in Utero Exposure*, 71 Journal of Toxicology and Environmental Health, Part A, 119 (2008).

¹⁵ See, e.g., David Gibbons et al., *A Review of the Direct and Indirect Effects of Neonicotinoids and Fipronil on Vertebrate Wildlife*, Environmental Science and Pollution Research (forthcoming), available at

Neonicotinoids enter the environment through multiple routes. They can be applied through seed treatments, foliar spraying, tree injections, and soil drenching¹⁶ and are taken up and distributed through the entire plant, including flowers, pollen, and nectar.¹⁷ They can then enter the surrounding environment through many routes, including dust from planting treated seeds, build-up in treated soil, runoff into surrounding water, and through contaminated pollen and nectar.¹⁸ They are also widely used, and neonicotinoids and the systemic pesticide fipronil accounted for one-third of the global market for insecticides in 2010.¹⁹

It is our understanding that EPA has taken some steps towards addressing the impact of neonicotinoids on pollinators. In August 2013, for example, EPA announced new pesticide labeling requirements for certain neonicotinoids that prohibit application while bees are foraging and provide information on ways that bees can be exposed to pesticides.²⁰ However, concerns have been raised that the new labeling requirements inadequately protect bees from the effects of neonicotinoids, contain vague directions and terms, and only apply to foliar applications and do not affect other application methods, such as seed treatments or tree injections.²¹ We are also aware that EPA is currently in the process of reviewing registrations for six neonicotinoid pesticides as part of its registration review process. It is our understanding that Assistant Administrator Jones recently announced that EPA is working towards making a regulatory decision on neonicotinoids in 2016 or 2017.²² Although this new timeline would be an improvement over the current registration review timeline, which has deadlines ranging from 2016 to 2019,²³ we encourage EPA to act more quickly in order to avoid harm to pollinators and the environment.

A number of recent scientific studies demonstrate the risks that these chemicals pose to pollinators and surrounding ecosystems and the potential inefficiency of some current uses of these pesticides. The Worldwide Integrated Assessment of the Impact of Systemic Pesticides on Biodiversity and Ecosystems reviewed 800 scientific studies on the impact of systemic pesticides and its recently released findings reflect the many potential ways that these pesticides can harm

<http://www.tfbp.info/worldwide-integrated-assessment>; Pierre Mineau & Cynthia Palmer, American Bird Conservancy, *The Impact of the Nation's Most Widely Used Insecticides on Birds* (Mar. 2013).

¹⁶ van der Sluijs et al. *supra* note 12.

¹⁷ Johnson & Corn, *supra* note 8, at 10; van der Sluijs et al., *supra* note 12.

¹⁸ van der Sluijs et al., *supra* note 12.

¹⁹ *Id.*

²⁰ *New Pesticide Labels Will Better Protect Bees and Other Pollinators*, EPA (Aug. 15, 2013), http://yosemite.epa.gov/epr/admprocess.nsf/bd4379a92cecece8525735900400c27_c186766df22b37d485257bc8005b0c6?OpenDocument; Letter from Steven Bradbury, Director, EPA Office of Pesticide Programs to Registrants of Nitroguanidine Neonicotinoid Products (August 15, 2013).

²¹ *The Pollinator Stewardship Council Analysis of the "New Label,"* Pollinator Stewardship Council, available at <http://pollinatorstewardship.org/wp-content/uploads/2014/02/PSC-label-layout-of-concerns.pdf>.

²² Tiffany Stecker, *White House Pushes Back Official Release of Pollinator Report*, Greenwire, Oct. 22, 2014, <http://www.greenwire.net/greenwire/2014/10/22/stories/1060007741>.

²³ *Id.*; *Schedule for Review of Neonicotinoid Pesticides*, EPA, <http://www2.epa.gov/pollinator-protection/schedule-review-neonicotinoid-pesticides>.

pollinators and other parts of the surrounding environment.²⁴ For example, it found that these pesticides are present in the environment “at levels that are known to cause lethal and sublethal effects on a wide range of terrestrial (including soil) and aquatic microorganisms, invertebrates and vertebrates.”²⁵ Additionally, a recent study by the U.S. Geological Survey (USGS) found neonicotinoids in streams throughout the Midwest.²⁶ Furthermore, in October 2014, EPA released a report finding that neonicotinoid seed treatments provide minimal, if any, benefits to soybean crop yields.²⁷ There have also been other indications that some current uses of these chemicals, particularly in the form of seed treatments, do not provide consistent pest management benefits to farmers when compared to other pest management alternatives.²⁸

In May 2013, the European Commission banned certain uses of products containing the neonicotinoids clothianidin, thiamethoxam, and imidacloprid for a two year period.²⁹ This was based on findings that these products posed an unacceptable risk to bees under European Union law.³⁰ Additionally, in August 2013, the European Commission placed a similar ban on the systemic pesticide fipronil.³¹ The restrictions imposed by these actions included prohibiting the use of seeds treated with this pesticides for plants that attract bees, with some exceptions.³² Despite acknowledgement that EPA’s conclusions on the effects of clothianidin, imidacloprid, and thiamethoxam are similar to at least some of those that prompted the European Commission decision on these pesticides, EPA is not imposing similar restrictions, noting that the report underlying the European Commission decisions did not address factors that EPA must consider under U.S. law.³³ Instead, EPA appears to be waiting until the registration review process is complete.³⁴

²⁴ *Worldwide Integrated Assessment*. The Task Force on Systemic Pesticides, <http://www.tfsp.info/worldwide-integrated-assessment/>.

²⁵ van der Sluijs et al., *supra* note 12.

²⁶ Michelle L. Hladik et al., *Widespread Occurrence of Neonicotinoid Insecticides in Streams in a High Corn and Soybean Producing Region, USA*, 193 *Environmental Pollution* 189 (2014); *Insecticides Similar to Nicotine Widespread in Midwest*, U.S. Geological Survey (July 24, 2014), http://www.usgs.gov/newsroom/article.asp?ID=3941&_U9K-BPIdVSL.

²⁷ *EPA Finds Neonicotinoid Seed Treatments of Little or No Benefit to U.S. Soybean Production*, EPA (Oct. 16, 2014),

<http://www.epa.gov/epa/adm/press/ast/bd4379a92ccccccc8525735900400c27aa78c4812c2c1a5785257d730c721da1?OpenDocument>.

²⁸ See Center for Food Safety, *Heavy Costs: Weighing the Value of Neonicotinoid Insecticides in Agriculture* (Mar. 2014).

²⁹ Commission Implementing Regulation 485/2013, 2013 O.J. (L 139) 12 (EU).

³⁰ See *id.* at 12, 13.

³¹ Commission Implementing Regulation 781/2013, 2013 O.J. (L 219) 22 (EU).

³² See Commission Implementing Regulation 485/2013 *supra* note 29; Commission Implementing Regulation 781/2013, *supra* note 31.

³³ *Colony Collapse Disorder: European Bans on Neonicotinoid Pesticides*, EPA, <http://www.epa.gov/pesticides/about/infoworks/ccd-european-ban.html>.

³⁴ *Id.*

In July 2014, the U.S. Fish and Wildlife Service (FWS) decided to phase out the use of neonicotinoids across the National Wildlife Refuge System by January 2016.³⁵ In this decision, FWS stated: “We have determined that prophylactic use, such as a seed treatment, of the neonicotinoid pesticides that can distribute systematically in a plant and can potentially affect a broad spectrum of non-target species is not consistent with Service policy. We make this decision based on a precautionary approach to our wildlife management practices and not on agricultural practices.”³⁶ In making this determination, FWS became the first U.S. agency to restrict use of neonicotinoids.

The President’s memorandum in June highlighted the importance of this issue, as well as EPA’s key role in finding solutions. First, the President established a Pollinator Health Task Force, which is to be co-chaired by the Administrator of the EPA. The Task Force is instructed to consider, among other things, the role pesticide exposure plays in bee population declines, as well as new ways in which pollinator exposure to pesticides can be reduced. Additionally, the President instructed that EPA must “assess the effect of pesticides, including neonicotinoids, on bee and other pollinator health and take action, as appropriate, to protect pollinators.”³⁷

We respectfully request that EPA respond to the following questions and provide supporting documentation by December 15, 2014:

1. How does EPA plan to fulfill its directive from President Obama to assess the effect of pesticides, including neonicotinoids, on bees and other pollinators? How will EPA consider the cumulative effect of exposure from different routes, such as seed treatments and foliar spraying? How will EPA consider both lethal and sub-lethal effects of pesticides on pollinators? It is our understanding that the National Pollinator Health Strategy will not be completed by the December 2014 deadline set by the memorandum. Has a new timeline been set for completing this report? Does this affect the timeline for completing EPA’s required assessment of the effect of pesticides on pollinator health? If so, please explain.
2. The President’s memorandum also directs EPA to use the results of the assessment to take action to protect pollinators. What standard will EPA use to determine whether action is necessary, and on what timeframe will EPA act? Are there other actions EPA could take to protect pollinators, in addition to registration review for neonicotinoids? How will EPA use the results of the assessment to revisit past

³⁵ *U.S. Fish and Wildlife Service Bans GMOs and Neonicotinoid Insecticides*, National Wildlife Refuge Association (Aug. 8, 2014), <http://refugeassociation.org/2014/08/us-fish-and-wildlife-service-bans-gmos-and-neonicotinoid-insecticides/>.

³⁶ Memorandum from Chief, National Wildlife Refuge System to Regional Refuge Chiefs, Region 1-8 (July 17, 2014), *available at* http://www.centerforfoodsafety.org/files/agricultural-practices-in-wildlife-management_20849.pdf.

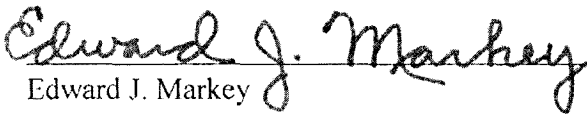
³⁷ Presidential Memorandum, *supra* note 7.

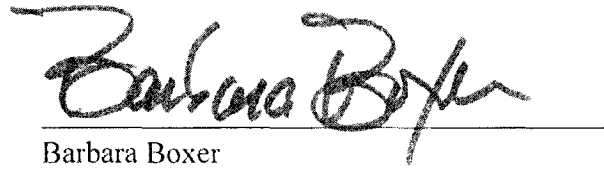
- decisions relating to neonicotinoids, including its 2012 decision not to suspend clothianidin registrations under its imminent hazard authority?
3. As described above, there are increasing indications that systemic pesticides not only pose risks for pollinators but can have broader impacts on the surrounding environment. This includes the presence of neonicotinoids in food consumed by humans. How is EPA evaluating the extent to which neonicotinoids are transferred in the environment surrounding application and planting sites, including surrounding groundwater? Will EPA incorporate the data and findings from USGS and FWS into its evaluation of neonicotinoids, particularly seed treatments, and their transfer into the environment and effect on biodiversity and water quality? Is EPA working with FDA to evaluate the occurrence of neonicotinoid residues in food and the impact that these pesticides may have on human health? If not, why not?
 4. How does EPA plan to incorporate information from independent scientific studies in its registration review for neonicotinoids? How will EPA consider the effects on components of the ecosystem other than pollinators, such as other invertebrates, vertebrates, and water quality?
 5. FIFRA's standard for pesticide registration prohibits pesticide uses that would have an "unreasonable adverse effects on the environment." The definition of "unreasonable adverse effects," as described above, requires an evaluation of the costs and benefits of using the pesticide. How will EPA take into account the impacts of systemic pesticides on pollinator health as well as other parts of the ecosystem in this analysis? How will EPA factor both lethal and sub-lethal effects in its consideration of the costs of using these pesticides? As discussed above, there are indications, including a recent EPA study on neonicotinoid seed treatments and soybean yields, that the some current uses of systemic pesticides, particularly prophylactic uses such as seed treatments, may not be providing the purported agricultural benefits to farmers. How will EPA take this evidence into account?
 6. Section 7 of the Endangered Species Act (ESA) requires that federal agencies consult with the Fish and Wildlife Service to ensure that their actions are not likely to jeopardize the continued existence of any listed species. A number of insects and other invertebrates are protected under the ESA. Has EPA completed a consultation for any active neonicotinoid ingredient? If not, why? What actions is EPA taking to fulfill its responsibilities under the ESA in regards to negative impacts neonicotinoids can have on threatened and endangered species?
 7. In a 2012 letter to Senator Markey, Assistant Administrator Jones stated: "If, at any time during our review, the science indicates that, in fact, neonicotinoid pesticides used according to label instructions are not meeting the protection standards of FIFRA, the EPA will take necessary regulatory action." Recently, Assistant Administrator Jones announced that EPA may make its regulatory decision on neonicotinoids by 2016 or 2017. Given the large number of independent scientific


studies already published on systemic pesticides and their impact on pollinator health, is EPA evaluating the information already available to determine whether regulatory action is needed before 2016 or 2017?

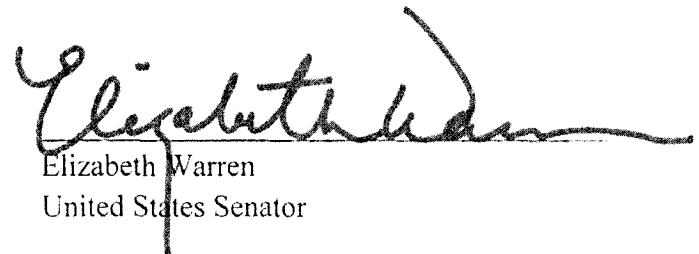
Thank you for your cooperation in responding to these requests. Please contact Angela Noakes or Dr. Avenel Joseph on Senator Markey's staff at 202-224-2742 with any questions.


Sincerely,



Edward J. Markey
United States Senator

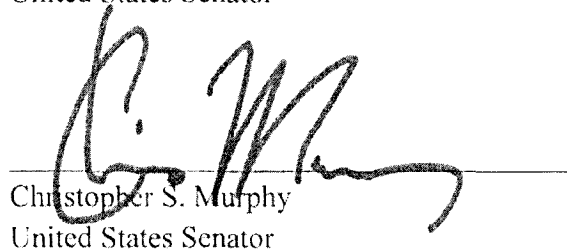

Barbara Boxer
United States Senator

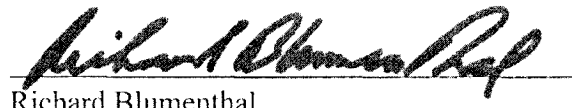

Sheldon Whitehouse
United States Senator



Elizabeth Warren
United States Senator



Brian Schatz
United States Senator


Benjamin L. Cardin
United States Senator


Christopher S. Murphy
United States Senator


Richard Blumenthal
United States Senator


Bernard Sanders
United States Senator


Mazie K. Hirono
United States Senator

THE WHITE HOUSE OFFICE
REFERRAL

November 20, 2014

TO: ENVIRONMENTAL PROTECTION AGENCY

ACTION COMMENTS:

ACTION REQUESTED: DIRECT REPLY W/COPY

REFERRAL COMMENTS: WHITE HOUSE IS REQUESTING THAT A JOINT IS DONE BETWEEN YOUR AGENCY AND THE INTERIOR DEPT.

DESCRIPTION OF INCOMING:

ID: 1151148

MEDIA: LETTER

DOCUMENT DATE: September 26, 2014

TO: PRESIDENT OBAMA

FROM: THE HONORABLE SHELDON WHITEHOUSE
UNITED STATES SENATE
WASHINGTON, DC 20510

SUBJECT: WRITES IN SUPPORT OF THE PRESIDENT ACTION TO ADDRESS CLIMATE
CHANGE AND TO REDUCE METHANE POLLUTION FROM THE OIL AND GAS
SECTOR

OFFICE OF THE
EXECUTIVE SECRETARIAT

2014 NOV 24 PM 1:05

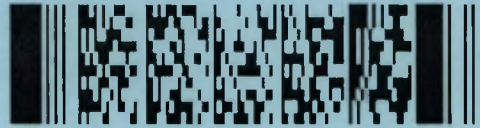
RECEIVED

COMMENTS:

PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE UNDERSIGNED AT (202) 456-2590.

RETURN ORIGINAL CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO: DOCUMENT TRACKING UNIT, ROOM 562, OFFICE OF RECORDS MANAGEMENT - THE WHITE HOUSE, 20500

**THE WHITE HOUSE
DOCUMENT MANAGEMENT AND
TRACKING WORKSHEET**



DATE RECEIVED: October 01, 2014

CASE ID: 1151148

NAME OF CORRESPONDENT: THE HONORABLE SHELDON WHITEHOUSE

SUBJECT: WRITES IN SUPPORT OF THE PRESIDENT ACTION TO ADDRESS CLIMATE CHANGE AND TO REDUCE METHANE POLLUTION FROM THE OIL AND GAS SECTOR

ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	ACTION		DISPOSITION		
		CODE	DATE	TYPE RESPONSE	CODE	DATE COMPLETED
LEGISLATIVE AFFAIRS	KATIE FALLON	ORG	10/02/2014			

ACTION COMMENTS:

✓ EPA R NOV 20 2014

ACTION COMMENTS:

DOZ/BLM R NOV 20 2014

ACTION COMMENTS:

ACTION COMMENTS:

ACTION COMMENTS:

COMMENTS: 14 ADDL SIGNEES

MEDIA TYPE: LETTER

USER CODE:

ACTION CODES	DISPOSITION		
A = APPROPRIATE ACTION B = RESEARCH AND REPORT BACK D = DRAFT RESPONSE I = INFO COPY/NO ACT NECESSARY R = DIRECT REPLY W/ COPY ORG = ORIGINATING OFFICE	TYPE RESPONSE	DISPOSITION CODES	COMPLETED DATE
	INITIALS OF SIGNER (W.H. STAFF) NRN = NO RESPONSE NEEDED OTBE = OVERTAKEN BY EVENTS	A = ANSWERED OR ACKNOWLEDGED C = CLOSED X = INTERIM REPLY	DATE OF ACKNOWLEDGEMENT OR CLOSEOUT DATE (MM/DD/YY)

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES

REFER QUESTIONS TO DOCUMENT TRACKING UNIT (202)-456-2590

SEND ROUTING UPDATES AND COMPLETED RECORDS TO OFFICE OF RECORDS MANAGEMENT - DOCUMENT TRACKING UNIT ROOM 562, EEOB.

United States Senate

WASHINGTON, DC 20510

1151148

September 26, 2014

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

We strongly support your Administration's efforts to address climate change through implementation of your *Climate Action Plan* as we continue to push for climate action in Congress. In the absence of Congressional action, we are relying on you to use existing legal authorities to address this dangerous threat. One critical step forward in the fight against climate change is to establish national standards to reduce methane pollution from the oil and gas sector.

We appreciate your March 2014 *Climate Action Plan Strategy to Reduce Methane Emissions*, which recognizes that curbing methane pollution is essential to solving climate change. Methane is the principal component of natural gas. When burned to generate heat or electricity, it releases less carbon dioxide than coal or oil; however, when unburned methane is emitted, it is a significantly more potent greenhouse gas. Ton for ton, methane causes at least 80 times more warming than carbon dioxide over a 20-year period. Pollution from oil and gas operations also contributes to unhealthy air by forming smog, which triggers asthma attacks and aggravates respiratory conditions like bronchitis.

The oil and gas sector is the United States' largest industrial emitter of methane. Currently, this sector emits significant methane in the form of leaks from oil and gas wells, compressors, pipelines, and other equipment, as well as intentional venting of methane to the atmosphere. In some areas, such as the Bakken shale formation in the Northern Great Plains, oil drillers are also wastefully flaring natural gas rather than capturing and using it. This leaked, vented, and flared gas wastes valuable and finite resources – often extracted from public lands – and pollutes the atmosphere. In addition to being environmentally destructive, it's fiscally irresponsible. According to Ceres, in 2012 alone, North Dakota oil and gas producers flared more than \$1 billion worth of natural gas from the Bakken.

There are cost-effective solutions to these problems, which should form the basis of strong standards that protect communities across the country. Voluntary standards are not enough. Too many in the oil and gas sector have failed to adopt sound practices voluntarily, and the absence of uniform enforceable standards has allowed methane pollution to continue, wasting energy and threatening public health.

Your methane strategy directs the Environmental Protection Agency (EPA) to begin solving these problems by determining how best to reduce methane pollution from the oil and gas sector nationwide no later than this fall. The strategy further directs the Bureau of Land Management

(BLM) to reduce venting and flaring from oil and gas production on public lands. These are critical steps, and EPA and BLM should move quickly to adopt national standards to reduce methane pollution, prevent waste, and protect our public health and environment.

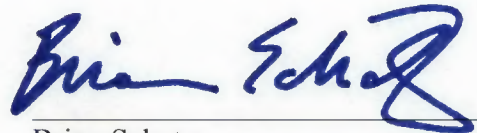
We are encouraged that BLM is poised to issue proposed standards to address venting and flaring on federal lands. We urge you to ensure that BLM releases its proposal this year and that its standards protect our public lands, valuable natural resources, and climate. EPA has also taken initial steps, but must go further. EPA has a responsibility under the Clean Air Act to address methane throughout the oil and gas sector. We urge you to ensure that EPA exercises its authority expeditiously to control methane pollution and its harmful effects.

Your methane strategy is a key component of your Administration's effort to combat climate change, and EPA and BLM are central to your strategy's success. You have outlined what is necessary and you have authority to achieve these goals. We stand ready to support your action.

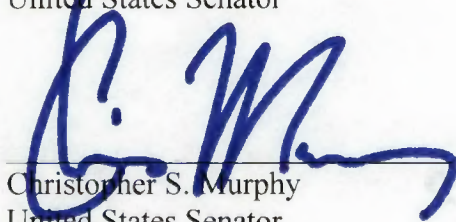
Sincerely,



Sheldon Whitehouse
United States Senator



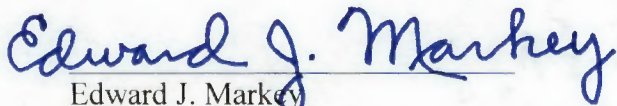
Brian Schatz
United States Senator



Christopher S. Murphy
United States Senator



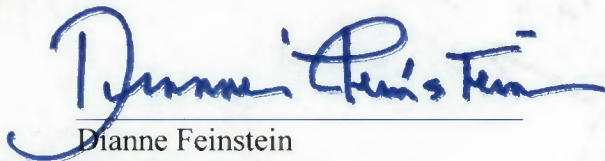
Benjamin L. Cardin
United States Senator



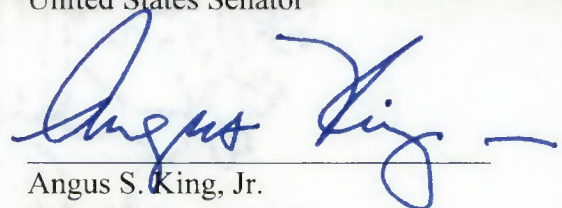
Edward J. Markey
United States Senator



Barbara Boxer
United States Senator



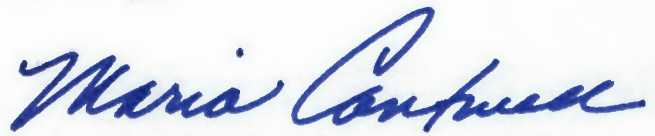
Dianne Feinstein
United States Senator



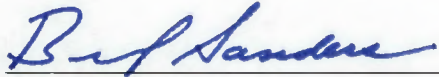
Angus S. King, Jr.
United States Senator



Richard Blumenthal
United States Senator



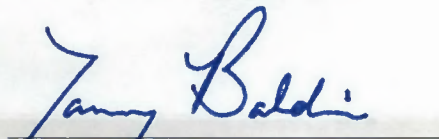
Maria Cantwell
United States Senator



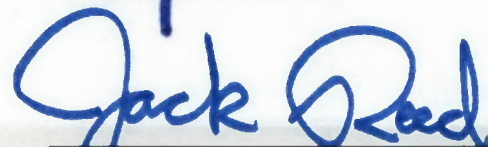
Bernard Sanders
United States Senator



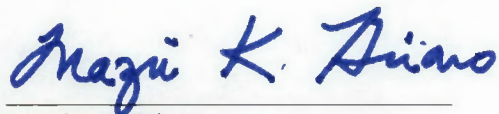
Elizabeth Warren
United States Senator



Tammy Baldwin
United States Senator



Jack Reed
United States Senator



Mazie K. Hirono
United States Senator

cc: John Podesta, Counselor to the President
The Honorable Gina McCarthy, Administrator, Environmental Protection Agency
The Honorable Sally Jewell, Secretary, Department of Interior



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 19 2014

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

MEMORANDUM

SUBJECT: Report to Congress: Interim Report on Endangered Species Act Implementation in Pesticide Evaluation Programs (Tier 3; SAN 5794)
– **ACTION MEMORANDUM**

FROM: *James J. Jones* *Louise Dwise*
Assistant Administrator (7101M)

THRU: Joel Beauvais
Associate Administrator
Office of Policy (1804A) *J Beauvais*

TO: Laura Vaught
Associate Administrator
Office of Congressional and Intergovernmental Relations (1301A)

PURPOSE

The U.S. Environmental Protection Agency is submitting the attached Report to Congress on behalf of the Departments of Agriculture, Commerce, and Interior. This report is intended to provide Congress with a description of the approaches and actions taken to 1) implement the recommendations of National Academy of Sciences' National Research Council report, entitled, "Assessing Risks to Endangered and Threatened Species from Pesticides" (hereafter referred to as the NRC's study), 2) ensure public participation and transparency during implementation of the recommendations from the NRC's study, and 3) minimize delays in integrating applicable pesticide registration and registration review requirements with species and habitat protections. This is the first report to be submitted; the second report is due February 7th, 2015.

DEADLINE

The deadline for submitting this Report to Congress was August 7, 2014.

OVERVIEW

Background

On February 7, 2014, President Obama signed into law the Agricultural Act of 2014 (i.e., the "Farm Bill"). As provided in Section 10013 of Title X – Horticulture, Congress required two reports. Congress directed the first report to be delivered 180 days after the Farm Bill was signed into law. The intent expressed in this provision is to keep the Agencies moving forward as they develop processes that will make it possible for the EPA to comply with the Endangered Species Act in a way that maximizes resources and minimizes delays of pesticide registration and reregistration decisions under the Federal Insecticide, Fungicide, and Rodenticide Act. In addition, the provision is intended to encourage meaningful public participation, and reemphasize that all reasonable and prudent alternatives and reasonable and prudent measures are technologically and economically feasible.

Summary of the Report

The NRC's study, entitled "Assessing Risks to Endangered and Threatened Species from Pesticides" was released on April 30, 2013. It contained recommendations on scientific and technical issues related to pesticide consultations under the ESA and FIFRA. Since then the EPA, and the National Marine Fisheries Service and the Fish and Wildlife Service (collectively, the Services) have worked to implement the recommendations.

Joint efforts to date include: collaborative relationship building between the EPA, NMFS, FWS, and the U.S. Department of Agriculture; clarified roles and responsibilities for the EPA, the Services, and USDA; agency processes designed to improve stakeholder engagement and transparency during review and consultation processes; two joint agency workshops resulting in interim approaches to assessing risks to listed species from pesticides; a plan and schedule for applying the interim approaches to a set of pesticide compounds; and multiple workshops and meetings with stakeholders to improve transparency as the pesticide consultation process evolves. As a result of the ongoing collaborative efforts, the EPA, and the Services are moving forward with developing and applying their interim approach to pesticide consultations, have completed some consultations affording species protections, and developed work products that describe changes to processes intended to streamline consultations and provide ample opportunity for stakeholder engagement as early as possible. Resources continue to be strained by the pesticide registration workload, and ongoing and new lawsuits.

ANTICIPATED PUBLIC AND STAKEHOLDER RESPONSE

This first Report to Congress provides only "the history and status of efforts by the Agencies to implement recommendations from the NRC study, improve transparency and stakeholder engagement during consultations, and minimize delays." Therefore, the agency expects a neutral reaction to this report.

INTERNAL DEVELOPMENT AND REVIEW PROCESS

This report was developed as a Tier 3 action under the agency's Action Development Process, with participation from the Office of General Counsel and the Office of Policy. Final Agency Review was initiated July 18, 2014 and concluded on July 29, 2014. FAR workgroup representatives concurred and provided minor comments that were addressed and incorporated into the report.

OMB TRANSACTION

The draft report was submitted to OMB for clearance on July 30, 2014. OMB cleared the report on November 14, 2014, after the EPA, working with the Services, addressed several comments and revised the report to elaborate on key points and clarify others.

IMPACTS

Potentially Regulated Entities

This report provides an update to Congress on implementing recommendations from the NRC's study, released on April 30, 2013. The report does not impact regulated entities.

Economic Impacts

This report is not a regulation; therefore, economic impacts were not examined.

Small Entity Impacts

This report is not a regulation; therefore, small business impacts were not examined.

Governmental Impacts

This report is not a regulation; therefore, governmental impacts were not examined.

Environmental Justice

Consistent with the July 2010 agency guidance entitled: *Interim Guidance on Considering Environmental Justice during the Development of an Action*, we have determined that this report does not raise potential environmental justice concerns.

STAKEHOLDER INVOLVEMENT

We developed this Report to Congress internally and did not involve parties external to the agency.

PEER REVIEW

There were no major scientific or technical products supporting this report as defined by the agency's Peer Review Handbook. Therefore, the report was not submitted for peer review.

RECOMMENDATION

I recommend that you route the attached Report to Congress for signature by the Administrator and subsequent dissemination to the designated members in Congress.

Attachments

DRAFT TRANSMITTAL LETTER FOR ESA/PESTICIDES REPORT TO CONGRESS

Addressee Note: *Identical letters will be addressed to:*

- 1) President of the Senate
- 2) Speaker of the House of Representatives
- 3) Chairman, Senate Committee on Environment and Public Works
- 4) Ranking Member, Senate Committee on Environment and Public Works
- 5) Chairman, House Committee on Agriculture
- 6) Ranking Member, House Committee on Agriculture
- 7) Chairman, Senate Committee on Agriculture, Nutrition and Forestry
- 8) Ranking Member, Senate Committee on Agriculture, Nutrition and Forestry
- 9) Chairman, House Committee on Natural Resources
- 10) Ranking Member, House Committee on Natural Resources

Dear _____:

The U.S. Environmental Protection Agency is submitting this Report to Congress on behalf of the Departments of Agriculture, Commerce, and Interior. This report is intended to provide Congress with a description of the approaches and actions taken to: 1) implement the recommendations of National Academy of Sciences' National Research Council report, entitled, "Assessing Risks to Endangered and Threatened Species from Pesticides" (NRC report); 2) ensure public participation and transparency during implementation of the recommendations from the NRC report; and 3) minimize delays in integrating applicable pesticide registration and registration review requirements with species and habitat protections. This Report to Congress is intended to satisfy the requirement for an interim report under section 10013(a) of the Agriculture Act of 2014 (P.L. 113-79).

The NRC report was released on April 30, 2013. It contained recommendations on scientific and technical issues related to pesticide consultations under the Endangered Species Act and the Federal Insecticide, Fungicide, and Rodenticide Act. Since then the EPA, and the National Marine Fisheries Service and the Fish and Wildlife Service (collectively, the Services) have worked to implement the recommendations.

Joint efforts to date include: collaborative relationship building between the EPA, the Services, and the USDA; clarified roles and responsibilities for the EPA, the Services, and the USDA; designed agency processes to improve stakeholder engagement and transparency during review and consultation processes; held two joint agency workshops resulting in interim approaches to assessing risks to listed species from pesticides; developed a plan and schedule for applying the interim approaches to a set of pesticide compounds; and conducted multiple workshops and meetings with stakeholders. As a result of the ongoing collaborative efforts, the EPA, the Services, and the USDA are moving forward with developing and applying their interim approach to pesticide consultations, have completed some consultations affording species protections, and developed work products that describe changes to processes intended to streamline consultations and provide ample opportunity for stakeholder engagement as early as possible.

If you need additional information or have further questions, please contact Sven-Erik Kaiser in the EPA's Office of Congressional and Intergovernmental Relations at Kaiser.sven-erik@epa.gov or (202) 566-2753.

Sincerely,
Gina McCarthy

United States Senate

WASHINGTON, DC 20510

December 9, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

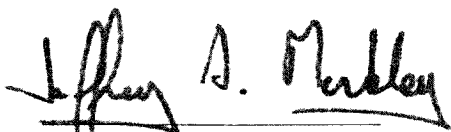
We commend the EPA for using its authority under the Clean Air Act to propose the *Clean Power Plan*—a flexible and practical approach to reduce carbon emissions from the electrical generation sector. The need for national action to reduce carbon emissions is essential to the United States taking responsibility for curbing its carbon emissions.

While the emission reduction goals of the *Clean Power Plan* are laudable, we believe that with modest changes to reflect real-world market and technological conditions, the plan can, and should, achieve even greater emissions reductions. Specifically, this letter includes recommendations in its Appendix that would result in more renewable energy (under Building Block Three) and energy efficiency (under Building Block Four) being deployed than is currently accounted for under the draft plan.

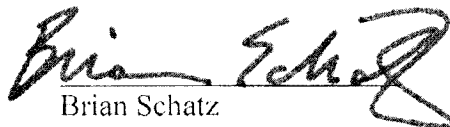
The *Clean Power Plan* will be the single most significant step this country has ever taken to tackle greenhouse gas emissions in the power sector, so it is essential that it be done right. For the *Clean Power Plan* to be a success, it must achieve the level of emissions reductions that the science calls for to avoid the most dangerous impacts of climate change. Maximizing the deployment of cost-effective renewable energy and energy efficiency will be the key to achieve the necessary emissions reductions. EPA's proposed *Clean Power Plan* can meet these objectives by making the modifications to the plan outlined in this letter.

We look forward to continue to work with you on this important and historic proposal to combat climate change. Attached is an appendix that provides greater detail on the recommendations made in this letter.

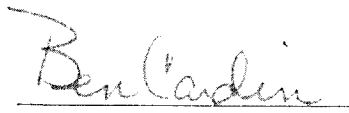
Sincerely,

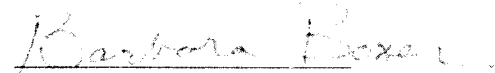


Jeffrey A. Merkley
United States Senator




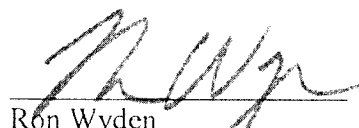
Brian Schatz
United States Senator

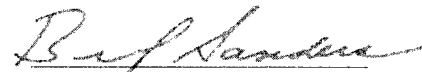

Benjamin Cardin
United States Senator



Barbara Boxer
United States Senator

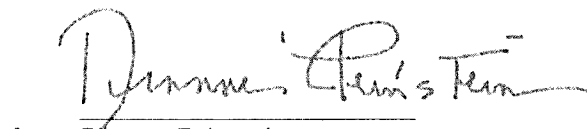

Edward J. Markey
United States Senator



Cory A. Booker
United States Senator


Ron Wyden
United States Senator


Bernard Sanders
United States Senator


Sheldon Whitehouse
United States Senator


Dianne Feinstein
United States Senator


Elizabeth Warren
United States Senator

Appendix: Recommendations to Improve Renewable Energy and Energy Efficiency Targets in the *Clean Power Plan*

Support for the General Framework

The overall framework of the *Clean Power Plan* provides important flexibility to each state, including the ability for states to join together in regional compliance plans, to pursue a variety of strategies to reduce emissions across the power generation sector. The building block approach prescribed in the proposed *Clean Power Plan* rule allows states to use multiple tools to reduce existing power plant emissions. Such flexibility will allow for states to reduce emissions in the manner most appropriate, and at lowest cost, to match their unique resource potentials and circumstances.

We believe that the rule could be further improved to reflect real world market conditions, and better align with existing state energy policies by making modest changes to the methodologies used in setting targets for renewable energy and energy efficiency. The improvements recommended in this letter are consistent with the statutory definition of Best System of Emission Reduction (BSER), which requires that an emissions limitation technology be “adequately demonstrated,” while taking into consideration costs and non-air quality health and environmental impacts.

Improving Renewable Energy Targets Under Building Block Three

Building Block Three of the *Clean Power Plan* considers the use of non-fossil energy technologies towards setting state emission reduction targets. The EPA proposed two possible methodologies for determining the amount of renewable energy available. We recommend using the Alternative Renewable Energy Approach, with the following changes:

- **Recognize the regional nature of the electricity system.** In most parts of the country, electric grids are regional, and so state targets should reflect renewable energy generation potential at the regional level. The EPA should use the alternative methodology to estimate regional technical potentials constrained by costs and grid integration limitations, and then set state targets on an equitable, pro-rata basis in a manner that would align with state Renewable Portfolio Standards. This approach would result in an accurate depiction of achievable state goals for renewable energy use based on regional generation potential.
- **Remove the benchmark deployment rate as a constraint on the target.** The EPA should instead set targets based on the Integrated Planning Model (IPM), which can calculate renewable energy development potential by evaluating the technical potential, costs, and grid conditions in each state. The EPA has previously relied on the IPM to analyze the impact of other air emissions policies on the US electric power sector, such as the Clean Air Interstate Rule, Cross-State Air Pollution Rule (CSAPR), the Mercury and Air Toxics Standards (MATS), and the proposed Carbon Pollution Standards for New

Power Plants.^[1] Therefore, there is precedent for relying on the IPM when setting renewable targets for each state.

- **Use current data to evaluate resource potential.** In its proposed rule, the EPA used outdated data for renewable energy, which do not reflect the current market conditions or recent technological developments. For example, the costs of solar energy have dropped dramatically in the past several years, and the technical resource potential of wind has increased due to an increase in the average hub height. EPA should make use of data from not only the Energy Information Administration, but also the National Renewable Energy Laboratory and Lawrence Berkeley National Labs, to reflect the latest renewable energy and energy efficiency technology costs and resource potentials.
- **Include distributed generation technologies in calculating state targets.** Distributed generation provides a significant and increasing portion of renewable energy production, however it is not accounted for in the draft rule. Utilities are increasing the use of distributed generation within their energy portfolios, and are purchasing renewable energy credits from distributed units to reduce carbon emissions in a cost-effective manner. Distributed renewable energy generation is a well-demonstrated technology and market, and should be accounted for as a component of BSER in the Clean Power Plan.

Improving Energy Efficiency Targets Under Building Block Four

Building Block Four of EPA's *Clean Power Plan* sets energy efficiency targets for each state. The EPA's preferred approach sets a target of 1.5% annual energy efficiency improvement. While these targets are set based on what the top performing states currently achieve in utility-based energy efficiency programs, this target does not capture all the efficiency measures available to states, and therefore underestimates energy efficiency potential. To more accurately represent energy efficiency potential, we recommend that the EPA should:

- **Consider all efficiency measures that have been adequately demonstrated in the marketplace.** Many states have adopted a wide variety of approaches to reduce energy consumption. For example, some states use loan programs and Energy Savings Performance contracts to finance energy savings retrofits. We believe that the 1.5% annual energy savings target is a readily achievable level of ambition for the suite of energy efficiency measures generally pursued by utility-based energy efficiency programs. We recommend that the EPA also consider the additional energy savings that can be achieved through measures outside of these programs, and increase the annual energy savings targets in Building Block Four accordingly.
- **Adopt a consistent approach in which any state that implements energy efficiency measures will receive full credit for such measures.** If states are not given full credit for energy efficiency measures, it is likely that energy efficiency will no longer be

^[1] Regulatory Impact Analysis for the Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants. June 2014. Page 3-3.
<http://www.epa.gov/ttn/ecas/regdata/RIAs/111dproposalRIAfina10602.pdf>

considered a cost-effective emissions reduction strategy in many parts of the United States.

Additional Improvement for Consideration

- **Emissions reductions from displaced fossil fuels through the deployment of renewable energy and efficiency should be accurately captured in emissions reduction targets for states.** As EPA explained in its October 27, 2014 Notice of Data Availability, the formula EPA used to set state targets fails to reflect the full carbon reductions possible from energy efficiency and renewable energy. This is because, in the original formula, EPA adds new megawatt-hours of renewable energy generation and efficiency savings to the formula, but does not reduce corresponding tons of carbon pollution from displaced fossil generation. When EPA sets final state targets, it should correct the formula to account for projected displaced fossil generation.

BARBARA BOXER, CALIFORNIA, CHAIRMAN

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JEFF SESSIONS, ALABAMA
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ROBERT WICKER, MISSISSIPPI
JOHN BOZMAN, MONTANA
KEVIN C. CULLEN, NEBRASKA

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

December 19, 2014

The Honorable Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
Washington, DC 20460

Dear Assistant Administrator Stanislaus:

Thank you for appearing before the Committee on Environment and Public Works on December 11, 2014, at the hearing entitled, "Oversight of the Implementation of the President's Executive Order on Improving Chemical Facility Safety and Security." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.


Enclosed are questions for you that have been submitted by Senators Boxer, Markey, Murray, and Enzi for the hearing record. Please submit your answers to these questions by COB December 31, 2014, to the attention of Drew Kramer, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to Drew_Kramer@epw.senate.gov. To facilitate the publication of the record, please reproduce the questions with your responses.


Again, thank you for your assistance. Please contact Jason Albritton of the EPW Committee's Majority staff at 202-224-8832, Bryan Zumwalt of the EPW Committee's Minority staff at 202-224-6176, Michael Waske of the HELP Committee's Majority staff at 202-224-5375, or Kyle Fortson of the HELP Committee's Minority staff at 202-224-6770 with any questions you may have. We look forward to reviewing your answers.

Sincerely,


Barbara Boxer
Chairman
Committee on Environment and Public Works


David Vitter
Ranking Member
Committee on Environment and Public Works


Tom Harkin
Chairman
Committee on Health, Education,
Labor, and Pensions


Lamar Alexander
Ranking Member
Committee on Health, Education,
Labor, and Pensions

Environment and Public Works Committee Hearing
December 11, 2014
Follow-Up Questions for Written Submission

Questions for Stanislaus

Questions from:

Senator Barbara Boxer

1. On what date do you commit to completing ALL of the Executive Order's directives within your Agency's jurisdiction?
2. Since 2002, the Chemical Safety Board (CSB) has recommended that ammonium nitrate hazards be incorporated into EPA's risk management program. Will EPA commit to address ammonium nitrate fertilizer hazards under its risk management program, and if so, when? Will implementation of these changes be completed before the President leaves office?
3. On March 5, 2014, I asked Administrator McCarthy to have the Working Group consider using EPA's existing authority under the Clean Water Act to address risks posed by above ground chemical storage tanks in the wake of the Freedom Industries spill. In your May 8, 2014 response to me, you assured me that the Working Group would consider exercising this authority. Despite your assurance, the Working Group's Status Report to the President does not even mention this authority. Will EPA commit to fully evaluate options for actions under Section 311(j)(1)(C) of the Clean Water Act to regulate above ground chemical storage tanks? If so, when will this analysis be complete? Will you commit to give me a complete report on your analysis?
4. Methyl mercaptan is a toxic chemical that recently killed 4 workers at the DuPont chemical plant in La Porte, Texas. In 1994, EPA tried to put methyl mercaptan on a list of chemicals that must be reported in EPA's Toxics Release Inventory, which is supposed to help communities better prepare for the risk of a chemical release. When industry challenged the listing, EPA agreed to withdraw it to avoid litigation [59 Fed. Reg. 43048, Aug. 22, 1994]. However, EPA also said that it would promptly act to address the questions about listing the chemical that were raised by industry. It has been 20 years since then, and EPA has not yet taken the action it promised to take. When will EPA act to ensure that methyl mercaptan is reported by chemical companies on their Toxics Release Inventory reports?
5. During the toxic chemical leak at the DuPont chemical plant in La Porte, Texas, last month, a facility employee called 911, but gave no useful details about the chemical released in his call with the 911 operator. In response to the 911 operator's question whether there was a risk to the public from toxic chemicals escaping the facility, he answered "No ma'am, it is not." When the first responders arrived, they were unable to enter the facility where the employees died because they did not have the proper personal protective gear. First responders need information to protect themselves and to most effectively respond to the accident.
 - a. What actions will the Working Group take to ensure that first responders have accurate information before they arrive at the accident scene when there are toxic chemical releases?
 - b. The Working Group's June 4, 2014 Report to the President states that first responders believe information sharing efforts need significant improvement, and that first responders want to be able to obtain the most-actionable information in a user-friendly format. What steps is the

Working Group taking to ensure the information provided to first responders is in an actionable and user-friendly format?

- c. The Working Group's June 4, 2014 Report to the President states that a key lesson learned is that first responders want access to information about enforcement actions taken or violations discovered at facilities, in order to better understand and respond to hazards at chemical facilities. Has the Working Group taken any steps to make this information available to first responders? If not, what steps will the Working Group take to share this information in an easily accessible and user-friendly format?
 - d. In its Report to the President, the Working Group commits to share "certain data elements of CFATS, RMP, PSM, and MTSA data" with first responders and other state, local, and tribal entities. What specific data elements does the Working Group commit to provide first responders? How will that information be made available to first responders?
6. Given the number of accidents that have occurred since the President issued the Executive Order, including the recent fatal toxic gas release at the DuPont plant in Texas that killed four workers, has the urgency to prevent future disasters caused the EPA to expedite the rule-making process to ensure that new RMP rules are issued promptly? Has EPA considered issuing an Alert or other Guidance concurrently with a notice of proposed rulemaking?
 7. After the tragic explosion at the fertilizer plant in West, Texas, the Government Accountability Office (GAO) conducted a review of the federal regulatory agencies' oversight of the safety of ammonium nitrate fertilizer. In the course of conducting that review, GAO was denied access by a number of States to EPCRA reporting data from facilities that handle ammonium nitrate. In addition, the Attorney General of Texas, now Governor-elect, issued a legal opinion arguing that State law allowed for the withholding from the public of information required to be reported under the federal EPCRA statute. When asked by the media how the state could justify withholding this information, he stated that members of the public could simply drive up to the chemical facilities and ask them directly.
 - a. Is EPA aware of other instances in which access to EPCRA reporting data was restricted or refused? If so, please provide a list of all such instances, along with a description of what data was restricted or refused, who restricted or refused it, how and when EPA was made aware of the restriction or refusal, and what EPA did to resolve the problem.
 - b. Will EPA commit to issuing guidance to States making clear that the federal EPCRA statute requires that this information be made public?
 8. The Working Group coordinated a pilot in New York-New Jersey involving multiple agencies at the Federal, state, and local levels.
 - a. What kinds of best practices or innovative methods were developed in the Region 2 Pilot Project developed under the Executive Order and what lessons were learned from the pilot?
 - b. How and when will EPA and the other Working Group agencies apply these lessons in other regions of the country?
 - c. The pilot specifically revealed "the need for Federal, State, and local partners to work together to increase industry's compliance with EPCRA requirements." After reviewing state data on reporting under EPCRA, EPA identified violations at 4 facilities in New York and 13 facilities in New Jersey. Is the Working Group taking steps to ensure that this process of information sharing to increase compliance with EPCRA requirements occurs in other regions? How does the Working Group propose to ensure that such information sharing continues to take place in the future?
 - d. Please provide me with a copy of any report detailing the outcome of the pilot project.

9. What, if anything, has the EPA done to improve communities' access to information and participation during planning for emergency responses? Does the EPA have any plans to further improve this, along with coordination with local responders? If so, please describe all such plans along with a timeline for their completion.
10. The Executive Order directed the Working Group to look at existing statutory authorities, but also required your agency to make recommended legislative changes. The Working Group's report to the President does not contain any recommended legislative changes to the statutes governing EPA's oversight of chemical facility safety. Please provide the Committee with your recommended legislative changes that would improve safety at chemical facilities.

Questions from Senators Barbara Boxer and Edward J. Markey

11. Executive Order 13650 ordered a number of specific actions to be completed by the Working Group. For the following list of actions, please indicate: i) whether the action was completed as directed in the Executive Order; ii) if so, provide a copy of the plan, assessment, list, analysis, recommendations, proposal, options, determination, Request for Information, or Solicitation of Public Input/Comment; and, iii) if not, indicate the date on which the action will be completed as directed. In each response, please also describe how the Working Group had addressed each specific element within each of the specific actions required by the Executive Order.
 - a. The **assessment** conducted by the Attorney General, through the head of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), into the feasibility of sharing data related to the storage of explosive materials with State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), Tribal Emergency Planning Committees (TEPCs). (Sec. 3(b); Within 90 days).
 - b. The **assessment** conducted by the Secretary of Homeland Security into the feasibility of sharing Chemical Facility Anti-Terrorism Standards (CFATS) data with SERCs, TEPCs, and LEPCs on a categorical basis. (Sec. 3(c); Within 90 days).
 - c. A **list** of any changes determined to be needed to existing memorandums of understanding (MOUs) and processes between EPA and CSB, ATF and CSB, and the Occupational Safety and Health Administration (OSHA) and CSB for timely and full disclosure of information. Please provide copies of the current drafts of the revised MOUs; or, if it was deemed to be appropriate by the Working Group, a draft of the single model MOU developed with CSB in lieu of existing agreements. (Sec. 4(c); Within 90 days).
 - d. The **analysis**, including **recommendations**, on the potential to improve information collection by and sharing between agencies to help identify chemical facilities which may not have provided all required information or may be non-compliant with Federal requirements to ensure chemical facility safety. (Sec. 5(a); Within 90 days).
 - e. The **recommendations** for possible changes to streamline and otherwise improve data collection to meet the needs of the public and Federal, State, local, and tribal agencies (including those charged with protecting workers and the public), consistent with the Paperwork Reduction Act and other relevant authorities, including opportunities to lessen the reporting burden on regulated industries. (Sec. 5(c); Within 180 days).
 - f. The **options** developed for improved chemical facility safety and security that identifies improvements to existing risk management practices through agency

programs, private sector initiatives, Government guidance, outreach, standards, and regulations. (Sec. 6(a)(i); Within 90 days).

- g. The **list** of potential regulatory and legislative proposals to improve the safe and secure storage, handling, and sale of ammonium nitrate and identify ways in which ammonium nitrate safety and security can be enhanced under existing authorities. (Sec. 6(b); Within 90 days).
- h. The **determination** of whether the EPA's Risk Management Program (RMP) and the OSHA's Process Safety Management Standard (PSM) can and should be expanded to address additional regulated substances and types of hazards, and the **plan**, including a timeline and resource requirements, to expand, implement, and enforce the RMP and PSM in a manner that addresses the additional regulated substances and types of hazards. (Sec. 6(c); Within 90 days).
- i. The **list** of chemicals, including poisons and reactive substances that should be considered for addition to the CFATS Chemicals of Interest list. (Sec. 6(d); Within 90 days).
- j. The **list** of changes that need to be made in the retail and commercial grade exemptions in the PSM Standard and the Request for Information designed to identify issues related to modernization of the PSM Standard and related standards necessary to meet the goal of preventing major chemical accidents. (Sec. 6(e); Within 90 days).

Questions from:

Senator Edward J. Markey

1) In 2009, during consideration of H.R. 2868, the Administration went through an inter-agency process to establish policy principles related to the use of inherently safer technology. Those principles are pasted below, and were delivered in Congressional testimony by Peter S. Silva, then-Assistant Administrator for Water at EPA as well as a witness representing the Department of Homeland Security. While these principles related to a piece of legislation that was not enacted and thus also not referred to in E.O. 13650, some of the principles do represent general policy statements. You did not fully or directly respond to these questions when I submitted them to you following our March 2014 hearing. Please do so now.

- a. Does the Administration continue to believe that all high-risk chemical facilities should assess IST methods and report the assessment to the federal government? If not, why not (and please provide copies of documents that establish the Administration's new policy)?
- b. Does the Administration continue to believe that regulators should have the authority to direct the highest risk chemical facilities to implement IST methods if such methods enhance overall security, are feasible, and, in the case of water sector facilities, consider public health and environmental requirements? If not, why not (and please provide copies of documents that establish the Administration's new policy)?
 - i. The Administration supports consistency of IST approaches for facilities regardless of sector.
 - ii. The Administration believes that all high-risk chemical facilities, Tiers 1-4, should assess IST methods and report the assessment in the facilities' site security plans. Further, the appropriate regulatory entity should have the authority to require facilities posing the highest degree of risk (Tiers 1 and 2) to implement IST method(s) if such methods enhance overall security, are feasible, and, in the case of water sector facilities, consider public health and environmental requirements.
 - iii. For Tier 3 and 4 facilities, the appropriate regulatory entity should review the IST assessment contained in the site security plan. The entity should be authorized to provide recommendations on implementing IST, but it would not require facilities to implement the IST methods.
 - iv. The Administration believes that flexibility and staggered implementation would be required in implementing this new IST policy. DHS, in coordination with EPA, would develop an IST implementation plan for timing and phase-in at water facilities designated as high-risk chemical facilities. DHS would develop an IST implementation plan for high-risk chemical facilities in all other applicable sectors."

2) The Department of Homeland Security¹ and EPA² have both repeatedly stated in Congressional testimony that the exclusion of drinking water and wastewater treatment facilities from federal chemical security regulations is a critical security gap.

¹ <https://www.dhs.gov/news/2011/03/30/written-testimony-nppd-house-committee-energy-and-commerce-hearing-titled-hr-908>,

- a. Does EPA still agree with its prior statements? If not, please explain why not
- b. In 2009, the Administration also believed that "EPA should be the lead agency for chemical security for both drinking water and wastewater systems, with DHS supporting EPA's efforts." Does EPA still agree with this statement, and if not, why not, given the nexus between the requirements for safe drinking water and treatment of wastewater and the need to secure and protect the public from the chemicals that are often used to achieve these requirements?
- c. Will EPA use its RMP, Safe Drinking Water Act or Clean Water Act authority to require upgrades to security for drinking and wastewater facilities in light of the long-standing critical security gap for these facilities? Please provide me with the specific actions EPA plans to take along with a timeline for their completion. If not, why not?
- d. Numerous drinking and wastewater facilities have successfully and inexpensively incorporated IST into their operations, including the replacement of chlorine gas with sodium hypochlorite or UV systems. Does EPA believe that the adoption of IST should be considered by all drinking and wastewater facilities as one measure that could address the critical security gap that exists for these facilities? Why or why not?

<http://democrats.energycommerce.house.gov/sites/default/files/documents/Testimony-Beers-EE-Drinking-Water-System-Security-CFAT-Act-2009-10-1.pdf>

² http://www.epa.gov/ocir/hearings/testimony/111_2009_2010/2010_0728_ccd.pdf,

http://www.epa.gov/ocirpage/hearings/testimony/111_2009_2010/2009_1001_pss.pdf

Questions from:

Senator Patty Murray

1. As you know, the Emergency Planning and Community Right-to-Know Act was passed in 1986, and provides resources to plan for chemical emergencies. Since its enactment there have been a large number of incidents, highlighting the need for substantial emergency planning.
 - a. Do the recent events at the DuPont industrial plant and the West Fertilizer Company facility in Texas warrant a statutory update of the Emergency Planning and Community Right-to-Know Act?
 - i. How have the owners of chemical facilities contributed to the training of first responders to potential accidents? How has the agency ensured that first responders are receiving adequate training?
 - b. How have Congress' repeated cuts to the EPA's budget and governing from crisis to crisis impacted the agency's ability to reach out to stakeholders and gather meaningful information? If Congress fails to repeal sequestration for the next fiscal year, how will implementation of the President's executive order be impacted?

Questions from:

Senator Michael B. Enzi

1. The Federal Action Plan outlined in the “Action to Improve Chemical Facility Safety and Security” report includes, under Item 4, ‘Expanding Tools to Assist SERCs, TERCs, LEPCs, and TEPCs in Collecting, Storing, and Using Chemical Facility Information,’ the intention to improve the Computer-Aided Management of Emergency Operations (CAMEO) hazardous material response software in order to expand analytical capabilities and promote information sharing. My understanding is that this is being developed at the EPA. Is the EPA considering options for enhancing, supplementing, or superseding CAMEO that include tools, apps, or software developed by the private sector?
 - a. Has the EPA considered cost-savings that could be derived from allowing the private sector to provide this resource?
2. The “Action to Improve Chemical Facility Safety and Security” report included discussion on information sharing among stakeholders in the New York/New Jersey pilot program. Can you clarify how information sharing will be structured going forward, and what specific types of data will be shared with federal, state, tribal, regional, local, and other stakeholders?

**THE WHITE HOUSE OFFICE
REFERRAL**

January 16, 2015

TO: ENVIRONMENTAL PROTECTION AGENCY

ACTION COMMENTS:

ACTION REQUESTED: DIRECT REPLY W/COPY

REFERRAL COMMENTS:

DESCRIPTION OF INCOMING:

ID: 1157668

MEDIA: LETTER

DOCUMENT DATE: December 19, 2014

TO: PRESIDENT OBAMA

FROM: THE HONORABLE ED WHITFIELD
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

SUBJECT: EXPRESSES CONCERN REGARDING THE PROPOSED RULE ANNOUNCED BY
EPA ON JUN 02 14 THAT WOULD CHANGE THE WAY THE WE GENERATE,
TRANSMIT AND CONSUME ELECTRICITY IN THE U.S.

COMMENTS:

**PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN TAKEN WITHIN 9 WORKING DAYS OF RECEIPT,
UNLESS OTHERWISE STATED, PLEASE TELEPHONE THE UNDERSIGNED AT (202) 456-2590.**

**RETURN ORIGINAL CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE (OR DRAFT) TO: DOCUMENT TRACKING UNIT,
ROOM 562, OFFICE OF RECORDS MANAGEMENT - THE WHITE HOUSE, 20500**

**THE WHITE HOUSE
DOCUMENT MANAGEMENT AND
TRACKING WORKSHEET**



DATE RECEIVED: December 22, 2014

CASE ID: 1157668

NAME OF CORRESPONDENT: THE HONORABLE ED WHITFIELD

SUBJECT: EXPRESSES CONCERN REGARDING THE PROPOSED RULE ANNOUNCED BY EPA ON JUN 02 14 THAT WOULD CHANGE THE WAY THE WE GENERATE, TRANSMIT AND CONSUME ELECTRICITY IN THE U.S.

		ACTION		DISPOSITION		
ROUTE TO: AGENCY/OFFICE	(STAFF NAME)	CODE	DATE	TYPE RESPONSE	CODE	DATE COMPLETED
LEGISLATIVE AFFAIRS	KATIE FALLON	ORG	12/30/2014			

ACTION COMMENTS:

✓ EPA

R

JAN 16 2015

ACTION COMMENTS:

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COMMENTS: 98 ADDL SIGNEES

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USER CODE:

ACTION CODES	DISPOSITION		
A = APPROPRIATE ACTION B = RESEARCH AND REPORT BACK D = DRAFT RESPONSE I = INFO COPY/NO ACT NECESSARY R = DIRECT REPLY W/ COPY ORG = ORIGINATING OFFICE	TYPE RESPONSE	DISPOSITION CODES	COMPLETED DATE
	INITIALS OF SIGNER (W.H. STAFF) NRN = NO RESPONSE NEEDED OTBE = OVERTAKEN BY EVENTS	A = ANSWERED OR ACKNOWLEDGED C = CLOSED X = INTERIM REPLY	DATE OF ACKNOWLEDGEMENT OR CLOSEOUT DATE (MM/DD/YY)

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES

REFER QUESTIONS TO DOCUMENT TRACKING UNIT (202)-456-2590

SEND ROUTING UPDATES AND COMPLETED RECORDS TO OFFICE OF RECORDS MANAGEMENT - DOCUMENT TRACKING UNIT ROOM 562, EEOB.

Congress of the United States
Washington, DC 20515

December 19, 2014

The Honorable Barack Obama
President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear President Obama:

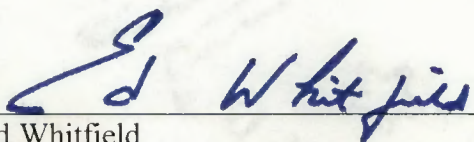
We write to express our concerns regarding the proposed rule announced by the Environmental Protection Agency on June 2, 2014 and entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units." This proposal is an unprecedented attempt by the EPA to change the way we generate, transmit and consume electricity in the United States by asserting new regulatory authorities over state electricity decision-making.

This unprecedented proposed rule would require states to submit individual or regional energy plans to be approved by EPA in order to achieve the agency's predetermined carbon dioxide emissions targets for each state. To comply with the rule, EPA directs states to consider including in their plans, and to make federally enforceable, a broad range of activities relating to a state's electricity sector. EPA specifically directs states to consider renewable energy standards, generation dispatch changes, co-firing or switching to natural gas, construction of new natural gas combined-cycle plants, transmission efficiency improvements, energy storage technology, plant retirements, expanding renewables like wind and solar, expanding nuclear, market-based trading programs, and demand-side energy efficiency and conservation programs. Under the rule, EPA would also have the ability to impose its own alternate federal energy plan on a state in the event EPA did not approve a state's plan. We agree that states should be free under their own laws to pursue these types of energy policies and activities within their own borders, but it is not the role of the EPA to exercise ultimate authority over a state's electricity system.

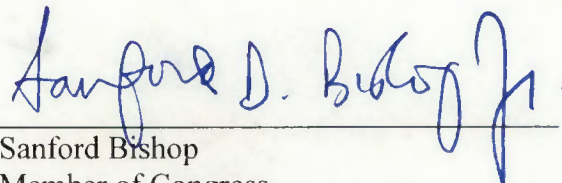
The continued affordability and reliability of our electricity supplies is critical to our nation's future economic growth, job creation, and to all American households and businesses. Due to market factors and existing environmental requirements, significant power plant shutdowns are already underway across the country, and these closures raise concerns about the continued reliability of the grid and electricity rates even in the absence of EPA's recently proposed rule. Under the proposed rule, EPA projects there would be additional power plant retirements and electricity rate increases. Were this to occur, these additional retirements and rate increases would further threaten electricity reliability and drive up energy costs for consumers, including the elderly, poor, and those on fixed incomes, at a time when over 50 million Americans are currently living in poverty.

Although the details of this proposed rule are still being considered by all stakeholders, the proposal threatens to impose huge burdens and challenges on states and higher costs on consumers. While our views on the statutory authority for carbon dioxide regulations vary, we are all concerned that this rule is simply unworkable as proposed and, if finalized, would effectively give EPA control over a state's generation, supply and consumption of power. Accordingly, we respectfully ask that you direct the EPA to withdraw its proposed rule as soon as practicable.

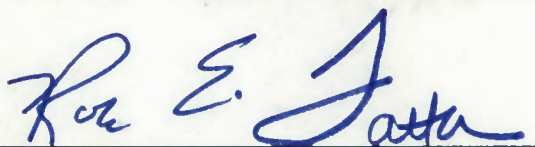
Sincerely,



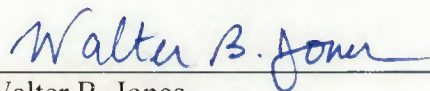
Ed Whitfield
Chairman, Energy and Power Subcommittee



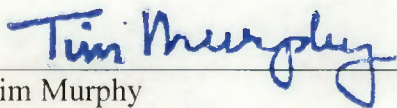
Sanford Bishop
Member of Congress



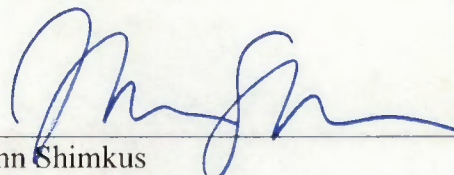
Robert E. Latta
Member of Congress



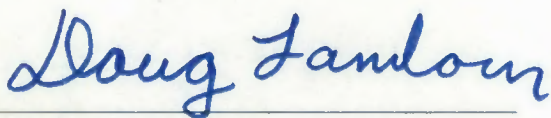
Walter B. Jones
Member of Congress



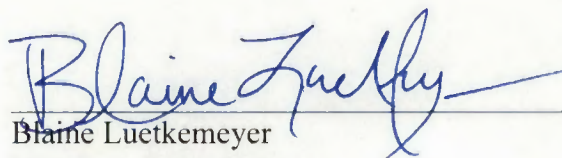
Tim Murphy
Member of Congress



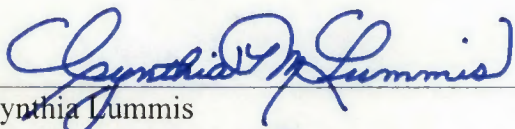
John Shimkus
Member of Congress



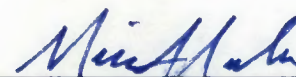
Doug Lamborn
Member of Congress



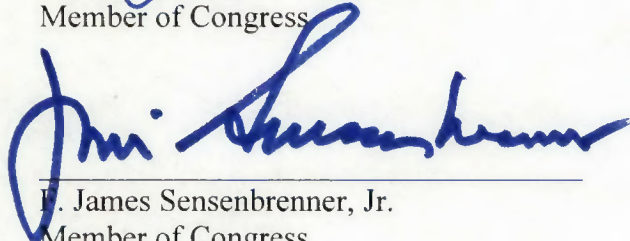
Blaine Luetkemeyer
Member of Congress



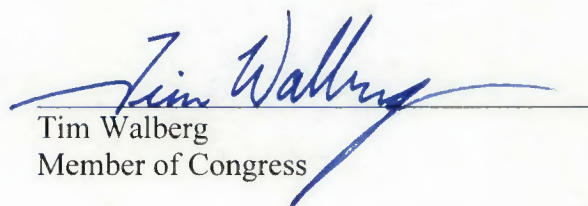
Cynthia Lummis
Member of Congress



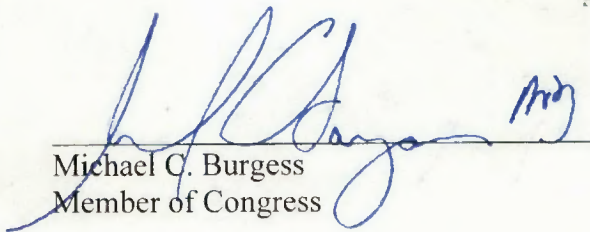
Mick Mulvaney
Member of Congress





F. James Sensenbrenner, Jr.
Member of Congress

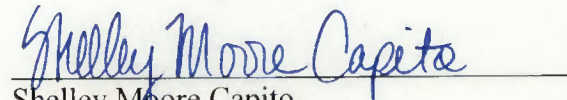


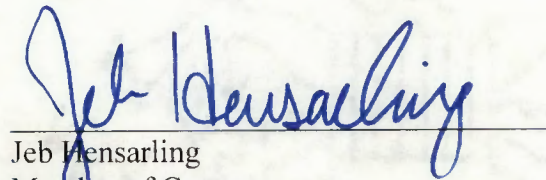
Tim Walberg
Member of Congress

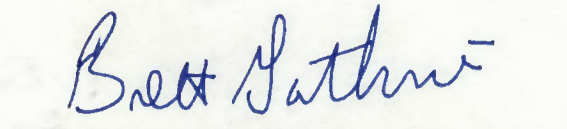

Michael C. Burgess
Member of Congress

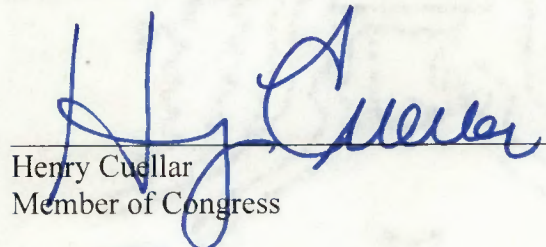

Virginia Foxx
Member of Congress

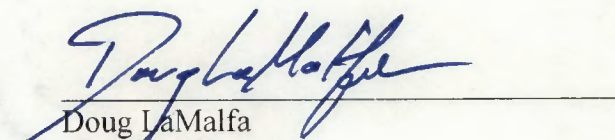

Louie Gohmert
Member of Congress

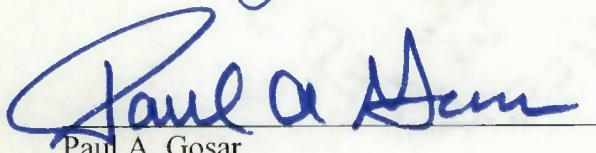

Shelley Moore Capito
Member of Congress

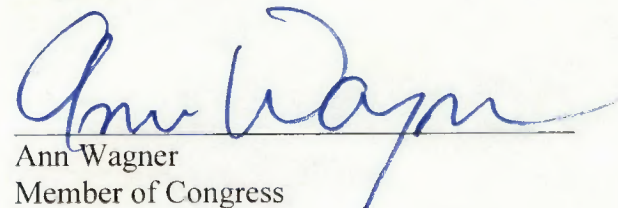

Jeb Hensarling
Member of Congress

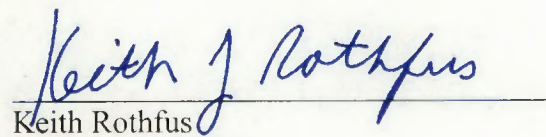

Brett Guthrie
Member of Congress

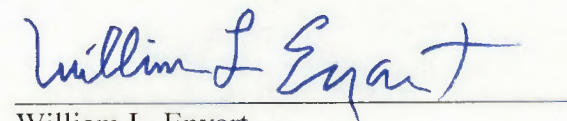

Henry Cuellar
Member of Congress

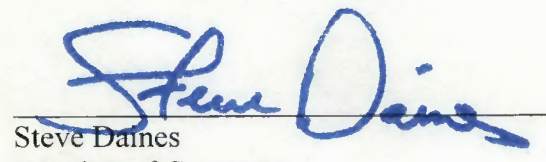

Doug LaMalfa
Member of Congress

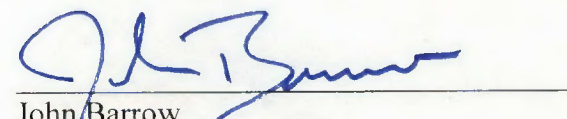

Paul A. Gosar
Member of Congress



Ann Wagner
Member of Congress

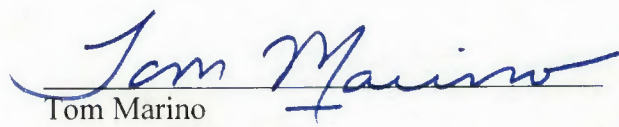

Keith Rothfus
Member of Congress

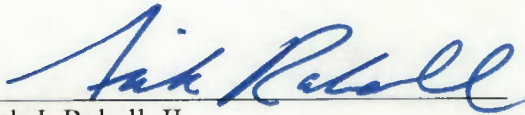

William L. Enyart
Member of Congress


Steve Daines
Member of Congress

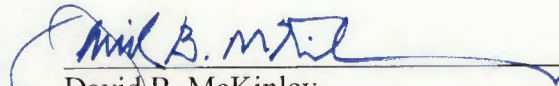

John Barrow
Member of Congress


Scott DesJarlais
Member of Congress

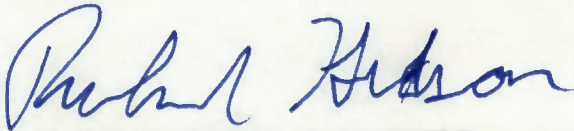

Tom Marino
Member of Congress



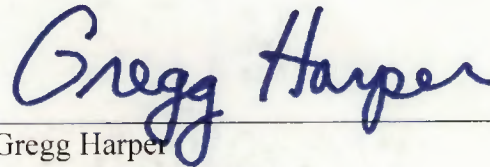
Nick J. Rahall, II
Member of Congress



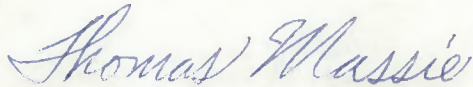
David B. McKinley
Member of Congress



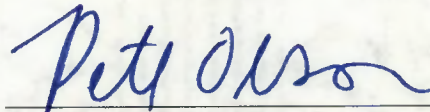
Richard Hudson
Member of Congress



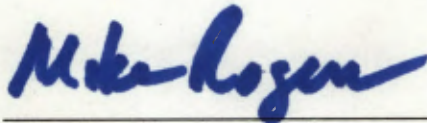
Gregg Harper
Member of Congress



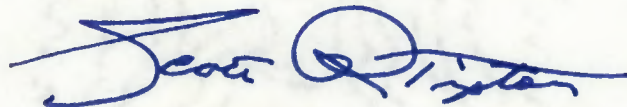
Thomas Massie
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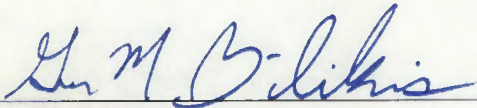
Pete Olson
Member of Congress



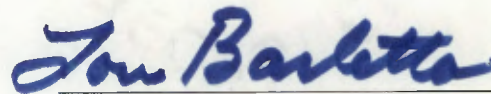
Mike Rogers
Member of Congress



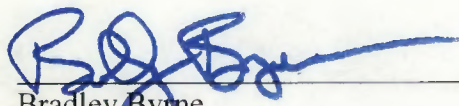
Scott Tipton
Member of Congress



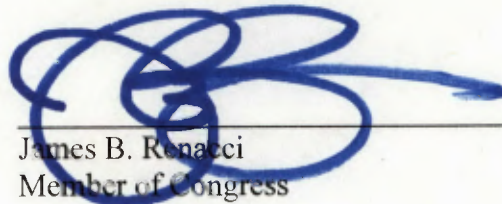
Gus M. Bilirakis
Member of Congress



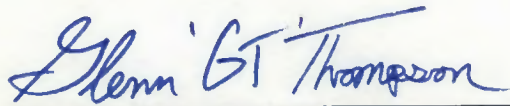
Lou Barletta
Member of Congress



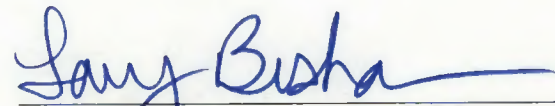
Bradley Byrne
Member of Congress



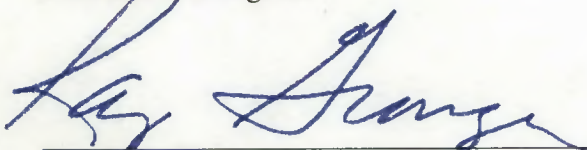
James B. Renacci
Member of Congress



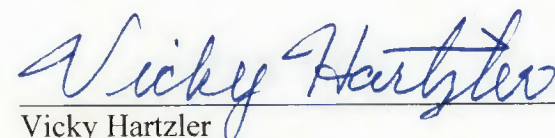
Glenn Thompson
Member of Congress



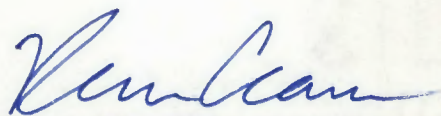
Larry Bucshon
Member of Congress



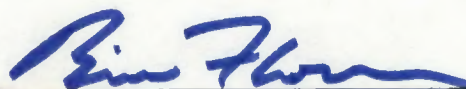
Kay Granger
Member of Congress



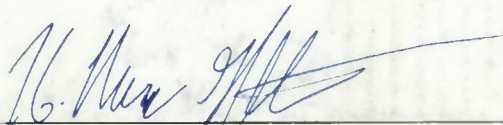
Vicky Hartzler
Member of Congress



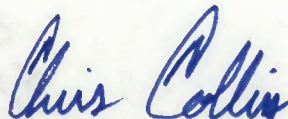
Kevin Cramer
Member of Congress



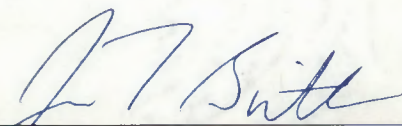
Bill Flores
Member of Congress



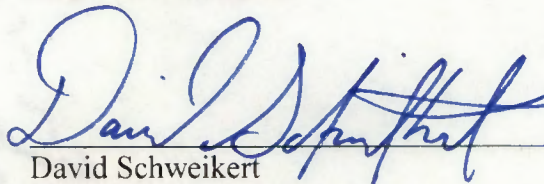
H. Morgan Griffith
Member of Congress



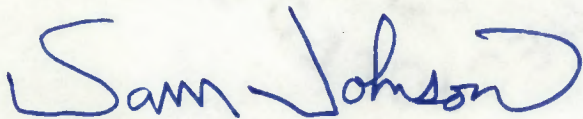
Chris Collins
Member of Congress



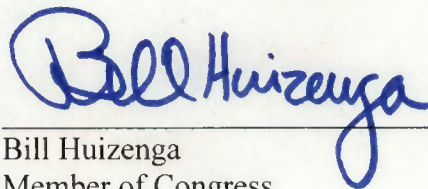
Jason T. Smith
Member of Congress



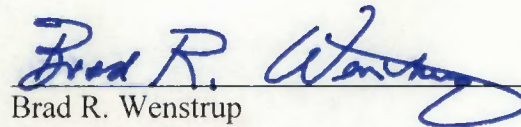
David Schweikert
Member of Congress



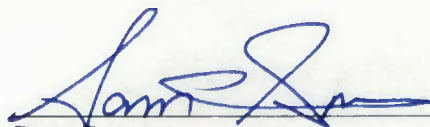
Sam Johnson
Member of Congress



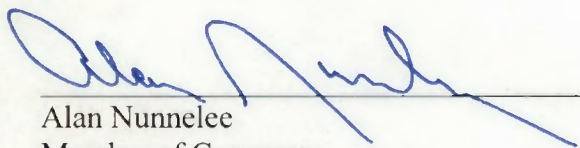
Bill Huizenga
Member of Congress



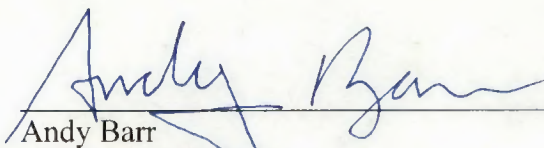
Brad R. Wenstrup
Member of Congress



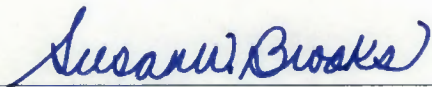
Sam Graves
Member of Congress



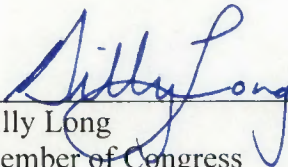
Alan Nunnelee
Member of Congress



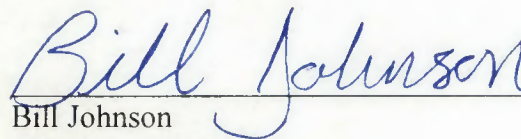
Andy Barr
Member of Congress



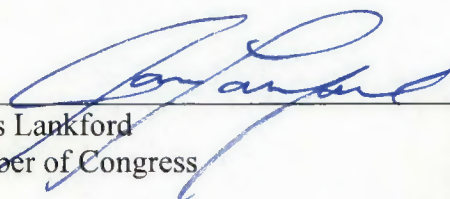
Susan W. Brooks
Member of Congress



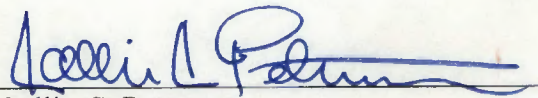
Billy Long
Member of Congress



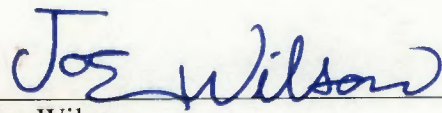
Bill Johnson
Member of Congress



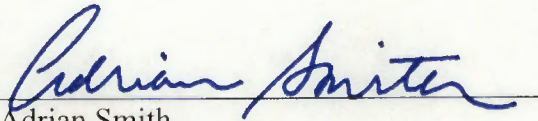
James Lankford
Member of Congress



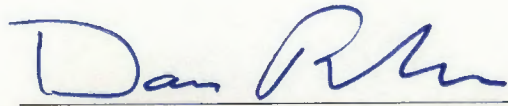
Collin C. Peterson
Member of Congress



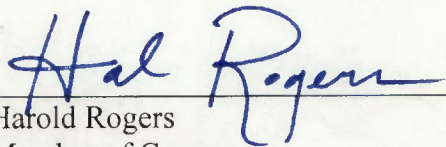
Joe Wilson
Member of Congress



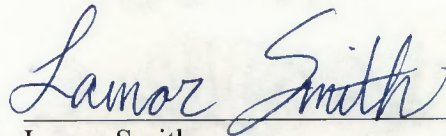
Adrian Smith
Member of Congress



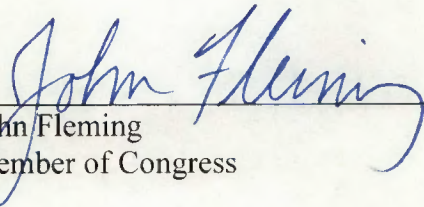
Dana Rohrabacher
Member of Congress



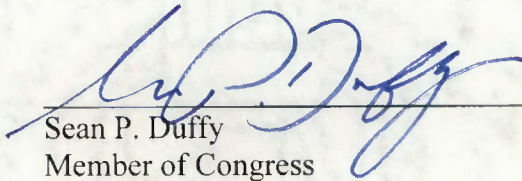
Harold Rogers
Member of Congress




Lamar Smith
Member of Congress



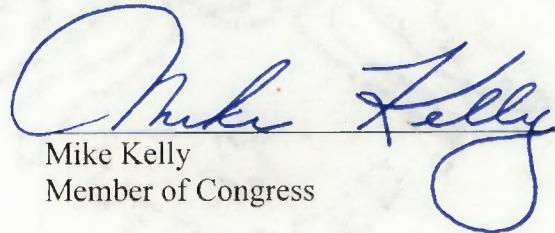
John Fleming
Member of Congress



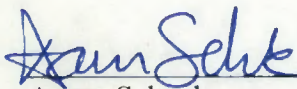
Sean P. Duffy
Member of Congress



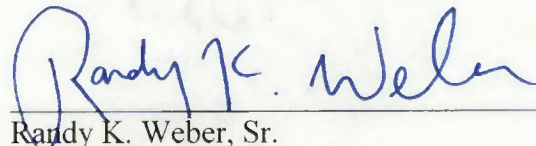
Steve Stivers
Member of Congress



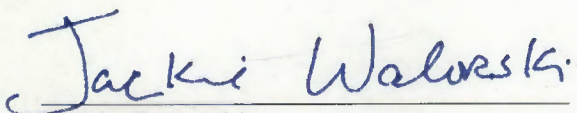
Mike Kelly
Member of Congress



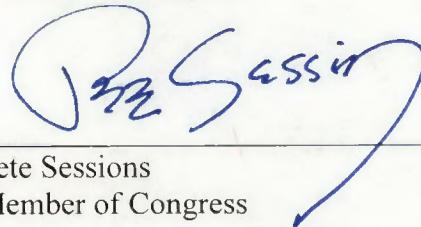
Aaron Schock
Member of Congress



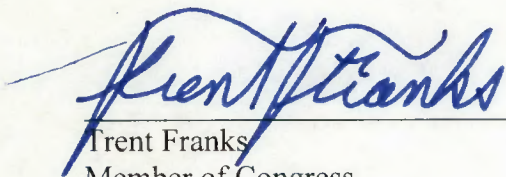
Randy K. Weber, Sr.
Member of Congress



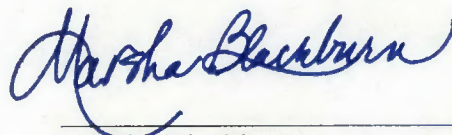
Jackie Walorski
Member of Congress



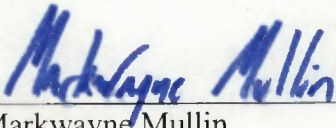
Pete Sessions
Member of Congress



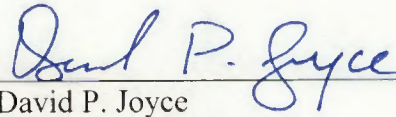
Trent Franks
Member of Congress



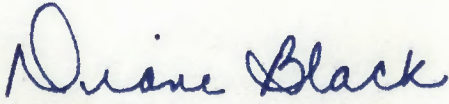
Marsha Blackburn
Member of Congress



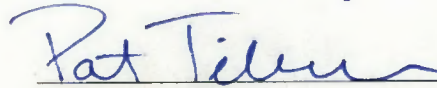
Markwayne Mullin
Member of Congress



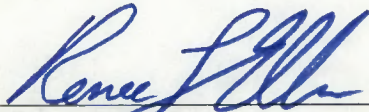
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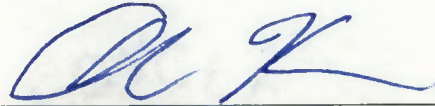
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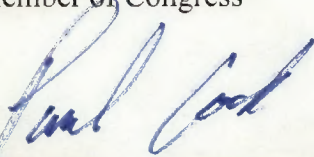
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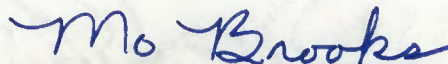
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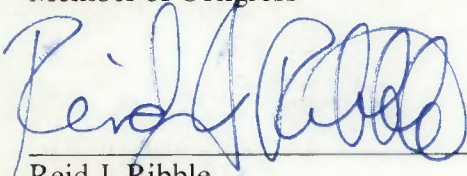
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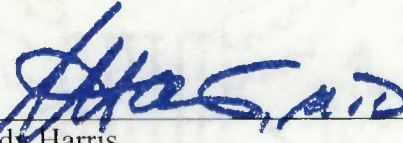
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Member of Congress



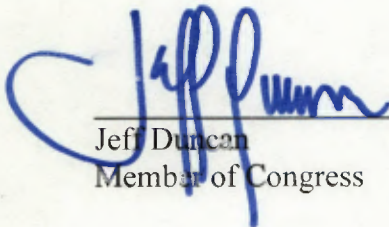
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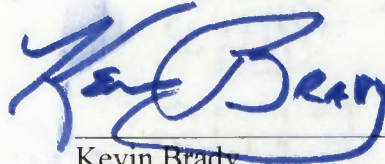
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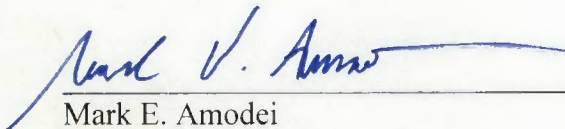
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Member of Congress



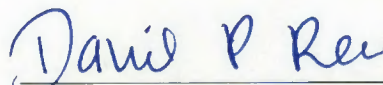
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Member of Congress



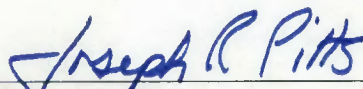
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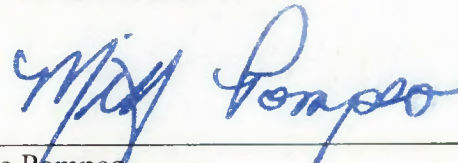
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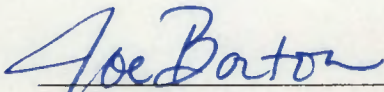
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Member of Congress



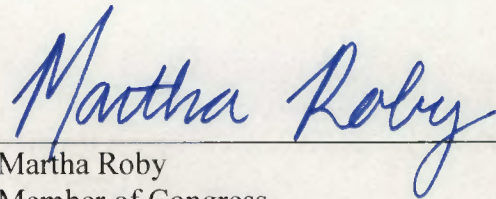
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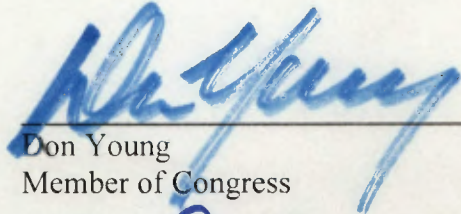
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Member of Congress



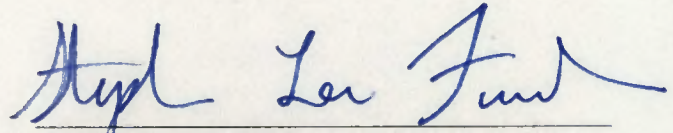
Joe Barton
Member of Congress



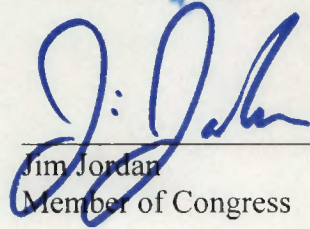
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Member of Congress



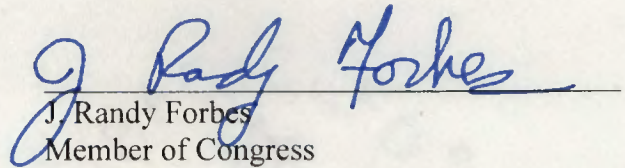
Don Young
Member of Congress



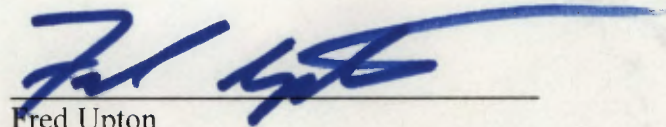
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J. Randy Forbes
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Aircraft Contrails Factsheet

Summary

This fact sheet describes the formation, occurrence, and effects of “condensation trails” or “contrails.” It was developed by scientific and regulatory experts at the Environmental Protection Agency (EPA), the Federal Aviation Administration (FAA), the National Aeronautics and Space Administration (NASA), and the National Oceanic and Atmospheric Administration (NOAA) in response to public inquiries regarding aircraft contrails. Contrails are line-shaped clouds sometimes produced by aircraft engine exhaust, typically at aircraft cruise altitudes several miles above the Earth’s surface. The combination of water vapor in aircraft engine exhaust and the low ambient temperatures that often exists at these high altitudes allows the formation of contrails. Contrails are composed primarily of water (in the form of ice crystals) and do not pose health risks to humans. They do affect the cloudiness of the Earth’s atmosphere, however, and therefore might affect atmospheric temperature and climate. The basic processes of contrail formation described in this fact sheet apply to both civil and military aircraft.

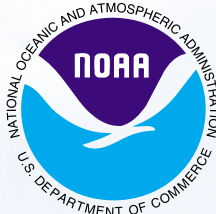
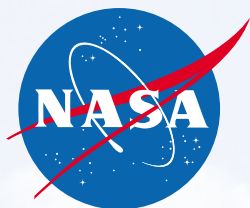
What are contrails?

Contrails are line-shaped clouds or “condensation trails,” composed of ice particles, that are visible behind jet aircraft engines, typically at cruise altitudes in the upper atmosphere¹. Contrails have been a normal effect of jet aviation since its earliest days. Depending on the temperature and the amount of moisture in the air at the aircraft altitude, contrails evaporate quickly (if the humidity is low) or persist and grow (if the humidity is high). Jet engine exhaust provides only a small portion of the water that forms ice in persistent contrails. Persistent contrails are mainly composed of water naturally present along the aircraft flight path.

How are aircraft emissions linked to contrail formation?

Aircraft engines emit water vapor, carbon dioxide (CO₂), small amounts of nitrogen oxides (NO_x), hydrocarbons, carbon monoxide, sulfur gases, and soot and metal particles formed by the high-temperature combustion of jet fuel during flight. Of these emittants, only water vapor is necessary for contrail formation. Sulfur gases are also of potential interest because they lead to the formation of small particles. Particles suitable for water droplet formation are necessary for contrail formation. Initial contrail particles, however, can either be already present in the atmosphere or formed in the exhaust gas. All other engine emissions are considered nonessential to contrail formation.

¹This fact sheet focuses on contrails produced by aircraft engine exhaust. However, the term “contrail” is also used to refer to the short trails sometimes briefly appearing over aircraft wings or engine propellers, especially under mild, humid conditions. These contrails consist entirely of atmospheric water that condenses as a result of local reductions in pressure due to the movement of the wing or propeller.



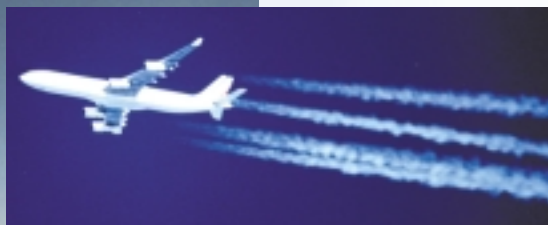


Figure 1. Contrails forming behind the engines of a Lufthansa Airbus A310-330 cruising at an altitude of 35,100 ft (10.7 km) as seen from research aircraft. (Photo: German Aerospace Center (Deutsches Zentrum für Luft- und Raumfahrt (DLR)), Oberpfaffenhofen, Germany.) Inset: Contrails forming behind the engines of a large commercial aircraft. Typically, contrails become visible within roughly a wingspan distance behind the aircraft. (Photo: Masako Imai, Cloud Castle/Photo Sky Japan.)

How do contrails form?

For a contrail to form, suitable conditions must occur immediately behind a jet engine in the expanding engine exhaust plume. A contrail will form if, as exhaust gases cool and mix with surrounding air, the humidity becomes high enough (or, equivalently, the air temperature becomes low enough) for liquid water condensation to occur. The level of humidity reached depends on the amount of water present in the surrounding air, the temperature of the surrounding air, and the amount of water and heat emitted in the exhaust.

Atmospheric temperature and humidity at any given location undergo natural daily and seasonal variations and hence, are not always suitable for the formation of contrails.

If sufficient humidity occurs in the exhaust plume, water condenses on particles to form liquid droplets. As the exhaust air cools due to mixing with the cold local air, the newly formed droplets rapidly freeze and form ice particles that make up a contrail (See Figure 1). Thus, the surrounding atmosphere's conditions determine to a large extent whether or not a contrail will form after an aircraft's passage. Because the basic processes are very well understood, contrail formation for a given aircraft flight can be accurately predicted if atmospheric temperature and humidity conditions are known.

After the initial formation of ice, a contrail evolves in one of two ways, again depending on the surrounding atmosphere's humidity. If the humidity is low (below the conditions for ice condensation to occur), the contrail will be short-lived. Newly formed ice particles will quickly evaporate as exhaust gases are completely mixed into the surrounding atmosphere. The resulting line-shaped contrail will extend only a short distance behind the aircraft (See Figure 2).

If the humidity is high (greater than that needed for ice condensation to occur), the contrail will be persistent. Newly formed ice particles will continue to grow in size by taking water from the surrounding atmosphere. The resulting line-shaped contrail extends for large distances behind an aircraft (See Figures 2 and 3). Persistent contrails can last for hours while growing to several kilometers in width and 200 to 400 meters in height.

Contrails spread because of air turbulence created by the passage of aircraft, differences in wind speed along the flight track, and possibly through effects of solar heating.

What are the ingredients of jet fuel, and are they important to contrail formation?

All jet fuel is a hydrocarbon mixture containing small amounts of impurities and additives. All aircraft jet fuel is analyzed for strict impurity limits before use. The hydrocarbon content of jet fuel produces water vapor as a by-product of combustion. Contrails would not form behind aircraft engines without the water vapor by-product present in exhaust.



Figure 2. Photograph of two contrail types. The contrail extending across the image is an evolving persistent contrail. Shown just above it is a short-lived contrail. Short-lived contrails evaporate soon after being formed due to low atmospheric humidity conditions. The persistent contrail shown here was formed at a lower altitude where higher humidity was present. Inset: Another example of a short-lived contrail. (Photos: J. Holecek, NOAA Aeronomy Laboratory, Boulder, CO.)

A common impurity in jet fuel is sulfur (~0.05% by weight), which contributes to the formation of small particles containing various sulfur species. These particles can serve as sites for water droplet growth in the exhaust and, if water droplets form, they might freeze to form ice

particles that compose a contrail. Enough particles are present in the surrounding atmosphere, however, that particles from the engine are not required for contrail formation. There are no lead or ethylene dibromide additives in jet fuel. Additives currently used in jet fuels are all organic compounds that may also contain a small fraction of sulfur or nitrogen.

Why are persistent contrails of interest to scientists?

Persistent contrails are of interest to scientists because they increase the cloudiness of the atmosphere. The increase happens in two ways. First, persistent contrails are line-shaped clouds that would not have formed in the atmosphere without the passage of an aircraft. Secondly, persistent contrails often evolve and spread into extensive cirrus cloud cover that is indistinguishable from naturally occurring cloudiness (See Figure 3). At present, it is unknown how much of this more extensive cloudiness would have occurred without the passage of an aircraft. Not enough is known about how natural clouds form in the atmosphere to answer this question.

Changes in cloudiness are important because clouds help control the temperature of the Earth's atmosphere. Changes in cloudiness resulting from human activities are important because they might contribute to long-term changes in the Earth's climate. Many other human activities also have the potential of contributing to climate change. Our climate involves important parameters such as air temperature, weather patterns, and rainfall. Changes in climate may have important impacts on natural resources and human health. Contrails' possible climate effects are one component of aviation's expected



Figure 3. Persistent contrails and contrails evolving and spreading into cirrus clouds. Here, the humidity of the atmosphere is high, and the contrail ice particles continue to grow by taking up water from the surrounding atmosphere. These contrails extend for large distances and may last for hours. On other days when atmospheric humidity is lower, the same aircraft passages might have left few or even no contrails. (Photo: L. Chang, Office of Atmospheric Programs, U.S. EPA.)

overall climate effect.

Another key component is carbon dioxide (CO₂) emissions from the combustion of jet fuel.

Increases in CO₂ and other “greenhouse gases” are expected to warm the lower atmosphere and Earth's surface. Aviation's overall potential for influ-

encing climate was recently assessed to be approximately 3.5 percent of the potential from all human activities (See Box 1).

Persistent line-shaped contrails are estimated to cover, on average, about 0.1 percent of the Earth's surface (Sausen et al., 1998; see Figure 4). The estimate uses:

- meteorological analysis of atmospheric humidity to specify the global cover of air masses that are sufficiently humid (low enough atmospheric temperature) for persistent contrails to form
- data from 1992 reported aircraft operations to specify when and where aircraft fly
- an estimated average for aircraft engine characteristics that affect contrail formation
- satellite images of certain regions of the Earth in which contrail cover can be accurately measured (See Figure 5)

The highest percentages of cover occur in regions with the highest volume of air traffic, namely over Europe and the United

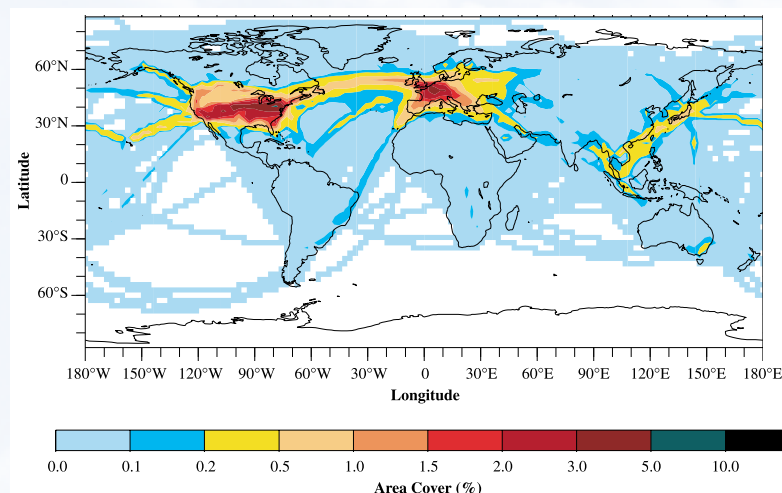


Figure 4. Estimated global persistent contrail coverage (in percent area cover) for the 1992 worldwide aviation fleet. The global mean cover is 0.1 percent. See text for description of how this estimate was made. (Reproduced with permission from Sausen et al., 1998, Figure 3, left panel.)

States (See Figure 4). This estimate of contrail cloudiness cover does not include extensive cirrus cloudiness that often evolves from persistent line-shaped contrails. Some evidence suggests that this additional cirrus cloudiness might actually exceed that of line-shaped cloudiness.

How is contrail coverage expected to change in the future?

Contrail cover is expected to change in the future if changes occur in key factors that affect contrail formation and evolution. These key factors include aircraft engine technologies that affect emissions and conditions in the exhaust plume; amounts and locations of air traffic; and background atmospheric humidity conditions. Changes in engine fuel efficiency, for example, might change the amount of heat and water emitted in the exhaust plume, thereby affecting the frequency and geographical cover of contrails. Changes in air



Figure 5. Satellite photograph showing an example of contrails covering central Europe on May 4, 1995. The average cover in a photograph is estimated by using a computer to recognize and measure individual contrails over geographical regions of known size. Photograph from the National Oceanic and Atmospheric Administration (NOAA)-12 AVHRR satellite and processed by DLR (adapted from Mannstein et al., 1999). (Reproduced with permission of DLR.)

traffic might also affect persistent contrail formation. It is currently estimated that regions of the atmosphere with sufficient humidity to support the formation of persistent contrails cover about 16 percent of the Earth's surface. If air traffic in these regions increases in the future, persistent line-shaped contrail

BOX 1



Scientific Assessment of the Global Atmospheric Effects of Aviation



The Intergovernmental Panel on Climate Change (IPCC) was established by the World Meteorological Organisation (WMO) and the United Nations Environment Programme (UNEP) in 1988 to assess the science, technology, and socioeconomic information needed to understand the risk of human-induced climate change. The 1999 IPCC report, "Aviation and the Global Atmosphere," (see References) describes current knowledge regarding aircraft effects on the global atmosphere. The report was compiled by more than 100 authors from 18 countries. Technical experts from the aviation industry, including airlines and airframe and engine manufacturers, worked with atmospheric scientists in creating this report.

The report considers all gases and particles emitted by aircraft into the upper atmosphere. It also examines the

role these gases and particles play in modifying the atmosphere's chemical properties and initiating the formation of contrails and cirrus clouds. Chapter 3 of the IPCC report provides detailed information about contrail formation, occurrence, and persistence. The report also considers how potential changes in aircraft technology; air transport operations; and the institutional, regulatory, and economic framework might affect emissions in the future. It does not address the effects of engine emissions on local air quality near the surface or potential human health effects of engine emissions. The report notes that significant scientific uncertainty is associated with aviation's predicted influence on climate. A report summary is available from the IPCC Web site at <www.ipcc.ch>.

cover there will also increase. Overall, based on analysis of current meteorological data and on assumptions about future air traffic growth and technological advances, persistent contrail cover is expected to increase between now and the year 2050.

Are persistent contrails harmful to the public?

Persistent contrails pose no direct threat to public health. All contrails are line-shaped clouds composed of ice particles. These ice particles evaporate when local atmospheric conditions become dry enough (low enough relative humidity). The ice particles in contrails do not reach the Earth's surface because they fall slowly and conditions in the lower atmosphere cause ice particles to evaporate.

Contrail cloudiness might contribute to human-induced climate change. Climate change may have important impacts on public health and environmental protection.

Do authorities regulate aircraft emissions?

In the United States, some aspects of aviation emissions are regulated through the efforts of several government agencies. The U.S. Environmental Protection Agency (EPA), under the Clean Air Act (CAA) of 1970, has established commercial aircraft engine exhaust emissions standards for certain emittants associated with ground-level air pollution. Jet engine exhaust contains, among other emittants, oxides of nitrogen (NO_x) and hydrocarbons that contribute to ozone formation. Jet aircraft are one of many sources of these pollutants. Ozone is a prime ingredient of smog in and near cities and other areas of the country. While EPA establishes emissions standards for aircraft, the Federal Aviation Administration (FAA) of the U.S. Department of Transportation (DOT) administers and enforces these standards. This domestic framework for regulating aircraft engine emissions is more fully described in Box 2. Currently, there are no regulations addressing contrails and their atmospheric effects.

BOX 2

U.S. Environmental Regulatory Framework for Aircraft Engine Emissions

The Clean Air Act (CAA) directs the U.S. Environmental Protection Agency (EPA) to establish aircraft and aircraft engine emissions standards for any air pollutant that could reasonably endanger public health and welfare. In 1997, EPA aligned U.S. emissions standards (40 CFR Part 87) with engine emissions standards and recommended practices (SARPs) prescribed by the International Civil Aviation Organization (ICAO), a United Nations agency established in 1944 that develops SARPs using the technical support of member states and the aviation community. The United States is an active member of ICAO's Committee on Aviation Environmental Protection, which is responsible for further development of engine emissions standards. In establishing U.S. emissions standards, EPA must consult with the Department of Transportation (DOT) to ensure such regulations' effective dates permit the development

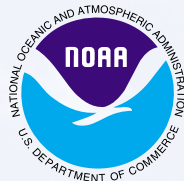
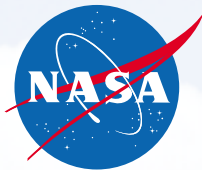
of requisite technology, giving appropriate consideration to compliance cost. It must also consult with DOT concerning aircraft safety before promulgating emissions standards.

Under the CAA, DOT is responsible for enforcing standards established by EPA. DOT delegated enforcement responsibility to the Federal Aviation Administration (FAA). FAA has issued regulations administering and enforcing the emissions standards that apply to civil airplanes powered by gas turbine engines. FAA ensures compliance with these regulations by reviewing and approving certification test plans, procedures, test reports, and engine emissions certification levels. For more information on aircraft emissions or to access EPA's or FAA's aircraft regulations, visit the Aviation Emissions Website of EPA's Office of Transportation and Air Quality at <www.epa.gov/otaq/aviation.htm>.

For further information

Further scientific information about the effects of aircraft on the upper atmosphere can be found in the 1999 IPCC report, "Aviation and the Global Atmosphere" (see References). Information about aircraft and aircraft engine emissions regulations can be found at EPA's aviation emissions Web site, <www.epa.gov/otaq/aviation.htm>. Information about military aircraft and military space launch activities, and their atmospheric and environmental effects, can be found at <http://xre604.brooks.af.mil/safmiq/esoh_issues.htm>. For additional copies or further information on this fact sheet, contact the EPA Stratospheric Protection Hotline at 800 296-1996.

Note: Some images or photos in this fact sheet were provided courtesy of other institutions or parties and may be protected by copyright. Permissions regarding those photos or images need to be obtained from the indicated source.



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Enclosure
List of Additional Materials

- The fact sheet entitled *Aircraft Contrails Factsheet*, EPA43O-F-00-005, along with other information about air pollutant emissions from aviation can be accessed at the EPA's aviation web site, at www.epa.gov/otaq/aviation.htm.
- The fact sheet entitled *Contrails Facts* is from the U.S. Air Force about military aircraft and their atmospheric and environmental effects.
- A 1999 report issued by the Intergovernmental Panel on Climate Change entitled, *Aviation and the Global Atmosphere*, discusses contrail formation and its effects in detail. A copy of this report (ISBN number 0 521 66300 8) may be ordered through Cambridge University Press' website at www.cambridge.org

CONTRAILS FACTS

The Air Force operates many aircraft and space systems that are constantly interacting with the environment. Atmospheric interactions such as exhaust gases forming contrails, chaff and flares deployment that produce smoke, aerial pest or weed control spraying, or in-flight emergency fuel releases usually have very minor environmental impacts over a very limited geographical area. This site provides basic information and links about contrails, aircraft and space launch exhaust emissions, chaff and flares, aerial spraying, in-flight emergency procedures, and related topics.

Aircraft, engines, chaff, and flares can produce a variety of condensation patterns (or contrails), exhaust plumes, vapor trails, or smoke patterns. The exhaust emissions produced by aircraft and space launch vehicles can produce contrails that look very similar to clouds which can last for only a few seconds or as long as several hours. Vapor trails are formed only under certain atmospheric conditions and create a visible atmospheric wake similar to a boat propeller in water and usually dissipate very rapidly. Chaff and flares produce unique smoke patterns that are visibly different than a contrail but have the same color and appearance as a cloud but which also typically dissipates very quickly. Aerial spraying for pest or weed control and fire suppression are the only Air Force activities which involve aircraft intentionally spraying chemical compounds (insecticides, herbicides, fire retardants, oil dispersants). In the case of an in-flight emergency, jet fuel may be released to lighten the landing weight and minimize the risk of fire if the aircraft should crash.

Background

The US military has played a significant historical role in the development of aircraft and space launch vehicles, airspace management, environmental management, and public land management procedures. In the earliest years of aviation and rocketry and up through the late 1980s, the military owned and operated the majority of the United States aircraft and space launch fleets. Since the end of the 1991 Persian Gulf War, the USAF has been in a drawdown and restructuring mode. In 1990, there were approximately 9,059 aircraft in the Air Force inventory and approximately 6,126 aircraft in 2000. Of the approximately 6,228 aircraft in the USAF fleet in 1998, 4,447 were assigned to active duty Air Force installations and 1,781 were assigned to Guard and Reserve units, usually co-located at municipal airports. For a more detailed discussion on the changing nature of military and civilian aviation, see A Review Of Military Aviation And Space Issues at <http://www.felsef.org/dec99.htm>.



In the 1980s, commercial airline passenger service and satellite telecommunication growth resulted in an increase in civil aircraft and space booster fleets with numbers almost equivalent to the military (total of all services). Future projections for the next 15 years indicate that commercial aviation and space launch fleets will become larger than the military fleet.

The civil aviation fleet is projected to grow from 12,281 aircraft in 1997 to 25,998 in 2017. The assumptions on growth rates and types of

aircraft are dependent on many changes in air traffic control, airspace management, and economic growth, but the general trend for civil aviation is increasing capacity by adding more frequent flights with smaller regional jets.

Aircraft fly along specific routes and corridors called the National Airspace System (NAS). The NAS is comprised of the air navigation routes and infrastructure across the United States that supports approximately 60,000 daily flights of commercial, general aviation, and military flights. The FAA is the lead federal agency charged with the operations and maintenance of the NAS. They manage over 5-million square miles of land routes and 23-million square miles of oceanic routes. The FAA must balance the safety and efficiency of the NAS on a daily basis. Many agencies and organizations are involved with the National Airspace System for a variety of purposes: civil air carriers, general aviation, military services, and research organizations. A typical snapshot of daily aircraft operations in the United States is shown below.

In the last ten years, there has been tremendous growth in the number of aircraft operated around the world. The majority of aircraft seen overhead are civilian flights, particularly near large cities. For a more detailed description of the NAS, see *A Review Of Military Aviation And Space Issues: Aerospace And Airspace (Part II)* at <http://www.felsef.org/jan00.htm>.

Condensation Trails ("contrails") from Aircraft Engine Exhaust

Contrails (short for "condensation trails") are line-shaped clouds sometimes produced by aircraft engine exhaust. The combination of high humidity and low temperatures that often exists at aircraft cruise altitudes allows the formation of contrails. Contrails are composed primarily of water (in the form of ice crystals) and do not pose health risks to humans. Contrails have been a normal effect of aviation since its earliest days. Depending on the temperature and the amount of moisture in the air at the aircraft altitude, contrails can either



evaporate quickly or they can persist and grow. Engine exhaust produces only a small portion of the water that forms ice in persistent contrails. Persistent contrails are mainly composed of water naturally present along the aircraft flight path.

Aircraft engines emit water vapor, carbon dioxide (CO₂), small amounts of nitrogen oxides (NO_x), hydrocarbons, carbon monoxide, sulfur gases, and soot and metal particles formed by the high-temperature combustion of jet fuel during flight. Of these emittants, only water vapor is necessary for contrail formation. Sulfur gases are also of potential interest because they lead to the formation of small particles. Particles suitable for water droplet formation are necessary for contrail formation. Initial contrail particles, however, can either be already present in the atmosphere or formed in the exhaust gas. All other engine emissions are considered nonessential to contrail formation.



For a contrail to form, suitable conditions must occur immediately behind a jet engine in the expanding engine exhaust plume. A contrail will form if, as the exhaust gases cool and mix with surrounding air, the humidity becomes high enough (or, equivalently, the air temperature becomes low enough) for liquid water to condense on particles and form liquid droplets. If the local air is cold enough, these newly formed droplets then freeze and form ice particles that make up a contrail. Because the basic processes are

very well understood, contrail formation for a given aircraft flight can be accurately predicted if atmospheric temperature and humidity conditions are known.

After the initial formation of ice, a contrail evolves in one of two ways. If the humidity is low, the contrail will be short-lived. Newly formed ice particles will quickly evaporate. The resulting contrail will extend only a short distance behind the aircraft. If the humidity is high, the contrail will be persistent. Newly formed ice particles will continue to grow in size by taking water from the surrounding atmosphere. The resulting line-shaped contrail extends for large distances behind an aircraft. Persistent contrails can last for hours while growing to several kilometers in width and 200 to 400 meters in height. Contrails spread because of air turbulence created by the passage of aircraft, differences in wind speed along the flight track, and possibly through effects of solar heating.

Thus, the surrounding atmosphere's conditions determine to a large extent whether or not a contrail will form after an aircraft's passage, and how it evolves. Other factors that influence contrail formation include engine fuel efficiency, which affects the amount of heat and water emitted in the exhaust plume.



Contrails become visible roughly about a wingspan distance behind the aircraft. Contrails can be formed by propeller or jet turbine powered aircraft. During WWII, large formations of bombers left strikingly remarkable contrail formations. Typical contrails are shown below.

The contrails formed by the exhaust at high altitude are typically white and very similar to cirrus clouds. As the exhaust gases expand and mix with the atmosphere, the contrail diffuses and spreads. It is very difficult to distinguish aged contrails from cirrus clouds. It is very difficult to distinguish aged contrails from cirrus clouds. At sunsets, these contrails can be visibly eye-catching and striking as they reflect the blue, yellow, and red spectrum of the reflected sunlight.



Persistent contrails are of interest to scientists because they affect the cloudiness of the atmosphere. Scientists in the United States, Europe, and elsewhere have studied contrail formation, occurrence, and persistence, and research efforts on these topics continue. Shown below is a photo taken from the research aircraft Falcon of the German Aerospace Center (Deutsches Zentrum für Luft- und Raumfahrt (DLR) at about flight level 33,300 feet of an Airbus A340 with contrails (left) and a Boeing 707 without contrails (right). This illustrates a scientific effort to evaluate the effects of different engine characteristics on contrail formation.

The Air Force uses a Boeing 707 airframe for the KC-135 refueling and E-3 AWACS aircraft. The KC-135 fleet is in the process of upgrading to newer engines which produce fewer emissions and noise. Scientific research on contrails was recently summarized by an international group of experts. This summary can be found in Chapter 3 of the report, "Aviation and the Global Atmosphere," published in 1999 by Cambridge University Press for the Intergovernmental Panel on Climate Change (IPCC). The report describes current knowledge regarding the effects of aircraft emissions on the global atmosphere. The full report is available from Cambridge University Press and a summary of this report is at www.ipcc.ch.

Wingtip Condensation Trails



A different type of contrail or condensation trail is caused when a wing surface or winglet causes a cavitation of air in very humid conditions. This results in a unique vapor trail that is not formed due to exhaust gases. The next time you fly in a commercial aircraft through a rain cloud, look for the vapor trails that form over and around the wing. Typical fighter wingtip contrails are shown below.

Exhaust Gases and Emissions

Often, military aircraft can be seen taking off with a black smoke appearing from the engines. This smoke is mainly soot particles, similar to diesel engines. Commercial aircraft also produce the same type of soot particles, but usually not to the same degree as military aircraft. This is for two reasons: the type of fuel and the type of engines.

Most military aircraft use JP-8 jet fuel which is a blend of commercial Jet Aviation Fuel -1 (or Jet A-1) with three extra additives. The additives are used to control ice formation, control biogrowth (molds and slimes), and inhibit corrosion. The military uses these additives because of the unique environments the military operates in, the type of self-sealing fuel tanks used, and the type of metals, plastics, and sealant used on military aircraft. Several specialized aircraft like the SR-71 and U-2 use different fuels than JP-8, but are developed from the same base stock. Fuels research is always ongoing. The newest fuel being brought into production is JP-8+100. Dubbed JP-8+100 because the additive package can increase the thermal stability of military fuel by 100 degrees Fahrenheit, the improved fuel helps prevent gums and deposits that can foul fuel lines.

Military engines are also designed with different performance characteristics than commercial aircraft. Military aircraft and engines also tend to be older and less efficient than commercial aircraft and produce more emissions. Engines are optimized for fuel consumption and power rates at a particular cruising altitude. At take-off, the engines are usually very inefficient and produce more emissions than when at the optimal cruising altitude. Older military aircraft like the B-52 and C-130 can leave a black smoke exhaust even at cruising altitude, while aircraft like the KC-135R with new engines produce an invisible exhaust plume. Typical pictures of aircraft exhaust emission are shown below.



Space launch vehicles and missiles produce a different type of exhaust than aircraft. The propulsion system on military rockets and missiles is usually made of solid rocket fuel. Missiles and rockets produce smoke plumes as a result of the solid fuel burning. The hot gases escaping from the motor can also create contrails, but the smoke and contrail combine to form a single exhaust plume. For more information on Air Force propulsion and fuels programs, see the Air Force Research Laboratory Propulsion Directorate at <http://www.pr.afrl.af.mil/>.



Chaff and Flares

Chaff and flares are defensive counter measures used on aircraft to confuse radar and heat seeking missiles. Chaff is used as a decoy for radar seeking missiles and is made of glass silicate fibers with an aluminum coating. The fibers are approximately 60% glass fiber and 40% aluminum by weight. The typical Air Force RR-188 chaff bundle contains about 150 g of chaff or about 5 million fibers. The fibers are 25 microns in diameter and typically 1 to 2 cm in length. In 1997, the Air Force used about 1.8 million bundles worldwide.

The amount of chaff released worldwide by all of the services is approximately 500 tons per year. Chaff falls to the earth at a settling velocity of approximately 30 cm per second. Atmospheric residence times range from 10 minutes for the majority of chaff released at 100 m to approximately 10 hours for chaff released at 10,000 feet. Chaff fibers experience little breakup before reaching the ground.

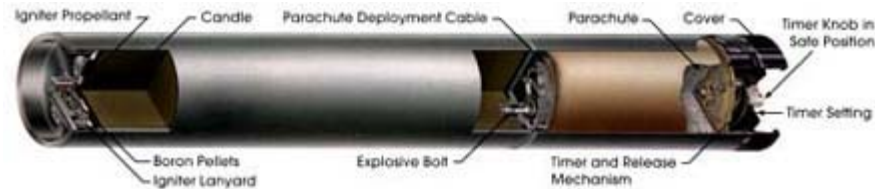
After the chaff is ejected from the aircraft and into the aircraft slipstream, the chaff packages burst open and the fibers scatter to form a radar-reflective cloud called a chaff corridor. Each chaff package is designed to simulate an aircraft. Several aircraft can create a chaff curtain, consisting of thousands of false targets, which confuse the radar guidance package on a missile so they are unable to locate the real targets within the chaff cloud.

Virtually all chaff fibers are 10-100 times larger than PM10 and PM2.5, the air particulates of concern for public health. The primary fiber size is usually too large to be inhaled by livestock, but if they are inhaled they do not penetrate far into the respiratory system and can be easily cleared out. The possible nutritional effects due to chaff ingestion and the risk is minimal to nil for both humans and livestock, considering the chemical composition of chaff (essentially identical to soil) and low chaff loading on the environment. Chaff decomposing in water has no adverse impacts on water chemistry or aquatic life.

Flares are of two types: decoy flares that protect aircraft from infrared missiles, and ground illumination flares. Decoy flares are typically made of magnesium that burns white-hot and are designed to defeat a missile's infrared (IR) tracking capability. The intense heat of the

pyrotechnic candle consumes the flare housing. Common aerial flares are: ALA-17/B, M-206, MJU-2, MJU-7 A/B, MJU-10/B, MJU-23/B, and RR-119.

Ground illumination flares, are designed to descend by parachute and provide up to 30 minutes of illumination of ground targets or activities. Typical flares are the LUU-1, LLU-5, and LLU-2B. A typical LLU-2B sectional is shown below.



The ground illumination flare enhances a pilot's ability to see targets while using Night Vision Goggles (NVGs). Flares burn at uneven rates and fluctuate in brightness and are not used as frequently as in the past as the intense light interferes with the newer NVGs more sensitive sensors.

The composition and materials of flares used by the military are similar to standard flares used for aerial, highway and marine purposes. (Skyline). While unburned decoy flares falling from high altitude could be dangerous, flares are designed to burn up during the descent (even the aluminum casing is burned).

Chaff and flares are deployed on most Air Force aircraft from a common MJU-11 Chaff/Flare magazine that is integrated with the warning receiver (a device that alerts the aircraft a missile has locked onto the aircraft). The magazine has a capacity of 30 RR-188 or 30 M-206 flares.

A very thorough independent description of military systems, equipment, and capabilities is published by the American Federation of Scientists.

Typical chaff and flare deployments and patterns are shown in the following pictures.





Aerial Spraying

There are some specific uses of commercial, private, and military aviation where chemicals are introduced in the atmosphere. The most common association of aerial chemical release is spraying for insects, either as crop dusting or mosquito prevention measures. These activities are typically performed at low altitude levels and produce a mist spray that drops to the earth's surface.



The only unit in the Air Force capable of aerial spray operations to control disease-carrying pests and insects is the AFRC's 910th Airlift Wing, Youngstown-Warren Air Reserve Station, Ohio (<http://www.afrc.af.mil/units/910aw/default.htm>). The aerial spray mission uses four specially configured C-130 Hercules shown below. Aerial spraying enables large parcels of land or water to be treated safely, quickly, accurately, and cheaply. This is the only fixed wing aerial-spray capability in the Department of Defense.



The mission started back in World War II, when legions of American GIs fell victim to malaria and dengue fever, diseases spread by mosquitoes. The mission was taken over from the active force in 1973. Although most of the unit's missions are initiated by the Department of Defense, its services are also requested by local, state and other federal agencies and coordinated the Center for Disease Control. The most common missions flown are for mosquito, sand flea and weed control. Several states have also requested support to combat grasshoppers and locusts. Aerial spray missions have been flown in Puerto Rico, Panama, Guam and the Azores.

The chemical compounds used for mosquito control are EPA controlled and the Air Force uses two primary brands; Dibrom and Anvil 10+10. Dibrom is manufactured by AMVAC Chemical Corporation and is classified as a Naled compound. Naled is an organophosphate insecticide that has been in use since 1959. It is used primarily for controlling adult mosquitoes but is also used on food and food crops, greenhouses and pet flea collars. Naled is applied using Ultra-Low Volume sprayers which dispense very fine aerosol droplets which kills the adult mosquito on contact. Naled is applied at a maximum aerial spray rate of 0.8 ounces of active ingredient per acre. Anvil 10+10 is manufactured by Clarke Mosquito Control Products, Inc and is a Sumithren, also known as a Synergized Synthetic Pyrethroid. Anvil 10+10 is applied using Ultra-Low Volume sprayers at a maximum aerial spray rate of 0.62 ounces of active ingredient per acre.

The chemical compounds used for herbicide weed control are EPA controlled and the Air Force uses Dupont Krovar I DF and Dow Agro Sciences Tordon K. Krovar I DF comes in granular form, is mixed with water and applied as an aerosol to control annual weeds at a rate of 4-6 pounds mixed with 40-100 gallons of water per acre. Tordon K is used as a herbicide to control broadleaf weeds, woody plants, and vines on non-crop areas such as forest planting sites, industrial manufacturing sites, rights-of-way such as electrical power lines, communications lines, pipelines, roadsides, railroads, and wildlife openings. Tordon K is applied at a maximum of 2 quarts per acre.

The 910th Airlift Wing has formed an Oil Dispersant Working Group, and is working with industry and government agencies to test aerial spray methods of controlling major offshore oil spills in coastal waters of the United States. The unit has six Modular Aerial Spray Systems (MASS) and four aircraft modified to accept the MAAS. Each MASS has a 2,000 gallon capacity and flow rate are set at 232 gallons per minute. The aircraft flies at 200 Knots Ground Speed at about 100 feet which covers a swath width of 100 feet for an average application rate of flow rate of 5 gallons per acre (variable 3-15 gallons per acre). Total spray-on time for 2,000 gallons lasts about 8 minutes and 30 seconds.

Photographs which show military aircraft with sprays coming from unusual locations on the aircraft are usually re-touched photos (a process that is easy to create using common computer programs).



Cloud Seeding and Fire Suppression

For a number of years commercial companies have been involved in cloud seeding and fire suppression measures. Cloud seeding requires the release of chemicals in the atmosphere in an effort to have water crystals

attach themselves and become heavy enough to produce rain. The Air Force does not have a cloud seeding capability.

Fire suppression involves dumping chemicals onto a fire using cargo-type aircraft or helicopters. The 731st Airlift Squadron assigned to the 302nd Airlift Wing, Peterson Air Force Base, CO., is trained in the use of modular airborne fire fighting systems that help firefighting efforts of the U.S. Forest Service by dropping retardant chemicals directly onto fires. The unit's C-130s are loaded with a system designed to airdrop fire-retardant chemicals used in fighting forest fires and fertilizing the forest to generate quick regrowth. The 302nd AW has conducted firefighting response in Colorado, California, Oregon and Idaho.



U.S. forest fires generally occur in desolate, almost inaccessible geographical areas. The U.S. Forest Service turned to air power to help its ground fire fighting units quickly contain and suppress these fires. Over the years, the forest service has developed a highly effective air-attack organization and air tanker fleet to deal with the forest fire emergency.

In 1970, however, numerous catastrophic forest fires erupted in southern California, severely overloading the air tanker fleet's ability to cope with them all. This led to several U.S. Congressmen requesting the U.S. Air Force help the forest service by making military aircraft available as a back-up measure. This in turn led to the development of the Modular Airborne Fire Fighting System (MAFFS). The system is designed to quickly adapt military C-130 aircraft from a military role to a fire-suppression role.

Since 1974, the U.S. Air Force Reserve and Air National Guard units strategically located near high-incident forest fire areas have been equipped with these MAFFS units, and have sent selected aircrews to the aircrew training school for instruction in forest service air operations and procedures.

The MAFFS System is a modular, reusable airborne system for deploying water and fire retardant chemicals from aircraft in flight. It



consists of seven airborne modules and one ground air compressor module. The system can be loaded on a C-130 aircraft in two hours, and filled with retardant and compressed air in 15 to 20 minutes. The system is self-contained and requires no aircraft modifications. Each system weighs 10,500 pounds empty, and has a capacity of 2,700 gallons.

The entire load of retardant is discharged over a fire in 6 to 8 seconds.

Other AFRC aircraft shuttle Forest Service personnel and equipment to fire areas when the emergency requires a swift deployment to the fire line. This increased mobility allows more efficient use of Forest Service resources.

In-flight Emergency Fuel Release

Another common, but infrequent, procedure is the release, or venting, of fuel as a safety measure. If an in-flight emergency (IFE) is declared, a pilot will want to land the aircraft with as light a load as possible to prevent the possibility of damaging the aircraft and/or causing a fuel leak on landing. In order to lighten the fuel load a pilot can continue to fly until the fuel is burned or vent the fuel into the atmosphere. Fuel that is released, or vented, typically atomizes into a fine spray as it is released and typically evaporates before it reaches the ground. JP-8 jet fuel released at low altitudes appears as a fine mist and may not volatilize before reaching the ground surface. The release of fuel does not produce a contrail and appears more like a smoke pattern that dissipates quickly.

The "Chemtrail" Hoax

A hoax that has been around since 1996 accuses the Air Force of being involved in spraying the US population with mysterious substances and show various Air Force aircraft "releasing sprays" or generating unusual contrail patterns. Several authors cite an Air University research paper titled "Weather as a Force Multiplier: Owning the Weather in 2025" (<http://www.au.af.mil/au/database/research/ay1996/acsc/96-025ag.htm>) that suggests the Air Force is conducting weather modification experiments. The purpose of that paper was part of a thesis to outline a strategy for the use of a future weather modification system to achieve military objectives and it does not reflect current military policy, practice, or capability.

The Air Force's policy is to observe and forecast the weather. The Air Force is focused on observing and forecasting the weather so the information can be used to support military operations. The Air Force is not conducting any weather modification experiments or programs and has no plans to do so in the future.

The "Chemtrail" hoax has been investigated and refuted by many established and accredited universities, scientific organizations, and major media publications.

Claims and Facts

Claim: Long-lasting contrails are something new and they have abnormal characteristics.

Fact: Contrails can remain visible for very long periods of time with the lifetime a function of the temperature, humidity, winds, and aircraft exhaust characteristics. Contrails can form many shapes as they are dispersed by horizontal and vertical wind shear. Sunlight refracted or reflected from contrails can produce vibrant and eye-catching colors and patterns. Observation and scientific analysis of contrails and their duration date back to at least 1953.

Claim: Grid patterns of contrails in the sky are evidence of a systematic spraying operation.

Fact: The National Airspace System of the United States is orientated in an east-west and north-south grid with aircraft flying at designated 2000 foot increments of elevation. Contrails formed by aircraft may appear to form a grid as the winds disperse the contrails. More contrails are seen in recent years due to the growth in the civil aviation market. The FAA is responsible for the NAS and Air Force aircraft operate under the same rules and procedures as civilian aircraft when using the NAS.

Claim: There are reported outbreaks of illness after the appearance of "Chemtrails"

Fact: There is no such thing as a "Chemtrail". Contrails are safe and are a natural phenomenon. They pose no health hazard of any kind. If there are massive outbreaks of illnesses, your local health department should be able to tell you if it is an abnormal event. Local health departments generally network together when they start seeing problems. If there is a problem, the CDC will get involved.

Claim: Samples taken have shown the presence of the "DOD patented" bacteria pseudomonas fluorescens.

Fact: The bacteria claimed to be DOD developed and patented is actually a common, naturally occurring bacteria. The U.S. Patent Office (www.uspto.gov) lists 181 patents involving pseudomonas fluorescens, none of which are held by DOD.

Links to Related Sites

- FAA Office of Aviation Research – <http://research.faa.gov/aar/>
- FAA Office of Environment and Energy – <http://aee.hq.faa.gov/>
- DOT Bureau of Transportation Statistics – <http://www.bts.gov/>
- Center For Disease Control and Prevention – <http://www.cdc.gov/>
- EPA Office of Pesticide Programs – <http://www.epa.gov/pesticides>
- International Civil Aviation Organization – <http://www.icao.int/>
- Air Transport Association – <http://www.air-transport.org/>
- Aerospace Industries Association – <http://www.aia-aerospace.org/>
- Federation of American Scientists – <http://www.fas.org/index.html>
- General Electric Aircraft Engines – <http://www.geae.net/>
- Pratt and Whitney Aircraft Engines – <http://www.pratt-whitney.com/engines/>
- Rolls-Royce Aircraft Engines – <http://194.128.225.11/defence/milp001.htm>

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Appleman, H., 1953. The formation of exhaust condensation trails by jet aircraft. Bulletin of the American Meteorological Society 34: 14-20. Brewer, A.W., 1946. Condensation trails. Weather 1: 34-40.

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Spargo, B.J., Environmental Effects of RF Chaff, Naval Research Laboratory, Washington, D.C., August 31, 1999.

Pike, John, Aircraft Weapon Loads, Federation of American Scientists, 2000.

Aircraft and Contrails. EPA publication number EPA430-F-00-005. 6 pp EPA, 2000. (www.epa.gov/otaq/aviation.htm)

Layman's Library

Contrails - Contrails, or condensation trails, are "streaks of condensed water vapor created in the air by an airplane or rocket at high altitudes." (Webster's Dictionary). Contrails are the result of normal emissions of water vapor from jet engines. At high altitudes, water vapor condenses and turns into a visible cloud. Contrails form when hot humid air from jet engines mixes with the surrounding air in the atmosphere which is drier and colder. The mixing is a result of turbulence generated by the jet engine exhaust. The water vapor in the jet exhaust then condenses and forms a cloud. The rate at which contrails dissipate is entirely dependent upon weather conditions and altitude. If the atmosphere is near saturation, the contrail may exist for some time. Conversely, if the atmosphere is dry, the contrail will dissipate quickly.

Contrail Grid Patterns - Numerous contrails are usually over "air routes", or highways in the sky. Aircraft fly in all different directions at any time, and numerous contrails may seem to "crisscross". Although contrails may appear to cross, the trails can actually be from planes separated by significant altitude and time.

Chaff - Chaff are small bundles of aluminum coated fibers that create a large radar reflection. A radar seeking missile is unable to distinguish an aircraft from the chaff and loses the lock on the aircraft.

Chemtrails - Chemtrails is a term coined to suggest contrails are formed by something other than a natural process of engine exhaust hitting the cold air in the atmosphere.

Ethylene dibromide - Ethylene dibromide, or EDB, is a pesticide that was used commercially before being banned by the Environmental Protection Agency in 1983. During WW II, EDB was used as an additive in aviation gasoline to help stop lead in the aviation gasoline from plating out on valves. Jet fuels, including JP-8 have never contained EDB. Soil samples showing the presence of EDB are most likely residuals from previous use as a pesticide. Webster's dictionary definition of EDB: "a colorless toxic liquid compound $C_2H_4Br_2$ that is used chiefly as a fuel additive in leaded gasolines, that has been found to be strongly carcinogenic in laboratory

animals, and that was used formerly in the U.S. as an agricultural pesticide -- abbreviation EDB."

JP-8 Jet Fuel - JP-8 jet fuel consists of kerosene, a petroleum distillate fraction purchased to specification. The specification requires that the fuel producer meet a range of chemical and physical properties to ensure proper aircraft operation. Fuel additives are allowed, but are highly controlled. Additives include antioxidants, metal deactivators, corrosion inhibitors, fuel system icing inhibitor, and a static dissipater additive.

Rocket Exhaust - The exhaust plume generated by solid or liquid fueled rockets. Solid rocket motors are usually made of ammonium perchlorate and typically create light colored exhaust emissions. The exhaust is mainly carbon dioxide and water, but may also have high levels of hydrochloric acid formed, but which disperses rapidly. Liquid fuel rockets are generally kerosene and Liquid Oxygen (LOX) and produce an exhaust, which is darker and similar to aircraft exhaust. The exhaust is primarily carbon dioxide and water, but may contain nitrous oxides, sulfides, and soot particles.

Stratospheric Ozone - The ozone formed in the upper atmosphere through the interaction of the sun's energy and oxygen and which provides the natural shielding effect for the earth from UV rays. This ozone layer is susceptible to destruction by chlorinated compounds and is generally associated with the ozone hole over the Antarctic. Ozone in the lower atmosphere and ground level is generally a by-product of motor vehicle fuel combustion that forms NO_x as a precursor which then forms ozone. This ozone is often seen as smog in most major cities.

Vapor Trails - The trail formed behind an aircraft as result of air flowing over a surface which creates a cavity in the air, similar to a boat propeller in water.

**U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Fiscal Year 2012

Annual Report to Congress
Pursuant to the
Notification and Federal Employee
Antidiscrimination and Retaliation
Act of 2002

TABLE OF CONTENTS

Executive Summary	1
Background.....	1
Data	2
Analysis of Trends and Practical Knowledge Gained	4
Adjustment to Budget	5
Actions Planned or Taken to Improve Programs.....	5
APPENDIX 1	
No FEAR 2012 Fiscal Year Totals.....	8
APPENDIX 2	
Anti Harassment Policy Statement.....	19
APPENDIX 3	
2012 EEO Policy Statement.....	21

I. EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency (EPA or Agency) provides its Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. As required, this report includes information related to the number of cases in Federal court pending or resolved in fiscal year (FY) 2012 and, in connection with those cases, their disposition; reimbursement(s) to the Judgment Fund; and the number of employees disciplined and the nature of the disciplinary action taken.

During FY 2012, there were a total of 12 cases pending before Federal courts. Among these cases, there were 11 claims of violation of Title VII; 3 claims of violations of the Rehabilitation Act; 5 claims of violation of the Age Discrimination in Employment Act; and one claim of violation of the Fair Labor Standards Act (sex discrimination).

Of the 12 cases noted above, one was settled during the reporting period. The settlement involved a total payment of \$175,000. In that settlement, no amount was separately designated for the payment of attorney's fees. The settlement amount will be reimbursed to the Judgment Fund.

Of the remaining 11 cases, one was dismissed with prejudice, one is pending appeal before the U.S. Court of Appeals for the 11th Circuit, and the remaining cases are pending adjudication in U.S. Federal District Courts.

II. BACKGROUND

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," or, as it is more commonly known, the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107-174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Public Law 107-174, Title I, General Provisions, section 101(1).

Section 203 of the No FEAR Act requires that each Federal agency submit an annual Report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal court cases pending or resolved in each fiscal year and arising under each of the respective areas of law specified in the Act in which discrimination or retaliation was alleged. In connection with those cases, agencies must report the status or disposition of the cases; the amount of money required to be reimbursed to the judgment fund; and the number of employees disciplined. Agencies must also report on any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual, or committed a prohibited personnel practice; any employees disciplined under such a policy for conduct inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws; and an analysis of the data collected with respect to trends, causal analysis, and other information.

The Act imposes additional duties upon Federal agency employers intended to reinvigorate their longstanding obligation to provide a work environment free of discrimination and retaliation. The additional obligations contained in the No FEAR Act can be broken down into five categories:

- A Federal agency must reimburse the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal employment discrimination laws, Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws.
- An agency must provide annual notice to its employees, former employees, and applicants for Federal employment concerning the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- At least every two years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and whistleblower protection laws.
- Quarterly, an agency must post on its public website summary statistical data pertaining to EEO complaints filed with the agency.

The President delegated responsibility to the Office of Personnel Management (OPM) for issuance of regulations governing implementation of Title II of the No FEAR Act. OPM published final regulations on the reimbursement provisions of the Act on May 10, 2006; final regulations to carry out the notification and training requirements of the Act were published on July 20, 2006; and the final regulations to implement the reporting and best practices provisions of the No FEAR Act on December 28, 2006. The Equal Employment Opportunity Commission (EEOC) published its final regulations to implement the posting requirements of Title III of the No FEAR Act on August 2, 2006. The EPA has prepared this report based on the provisions of the No FEAR Act in accordance with OPM and EEOC's final regulations.

III. DATA

a. Civil Cases

Section 203(a)(1) of the No FEAR Act requires that agencies include in their Annual Report "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged." Section 724.302 of OPM's final regulations on reporting and best practices clarifies section 203 (1) of the No FEAR Act stating that agencies report on the "number of cases in Federal Court [district and appellate] pending or resolved...arising under each of the respective provisions of the Federal Antidiscrimination laws and Whistleblower Protection Laws applicable to them...in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved."

During FY 2012, there were a total of 12 cases pending before Federal courts. Among these cases, there were 11 claims of violation of Title VII; 3 claims of violations of the Rehabilitation

Act; 5 claims of violation of the Age Discrimination in Employment Act; and one claim of violation of the Fair Labor Standards Act (sex discrimination).

Of the 12 cases noted above, one was settled during the reporting period. The settlement involved a total payment of \$175,000. In that settlement, no amount was separately designated for the payment of attorney's fees. The settlement amount will be reimbursed to the Judgment Fund.

Of the remaining 11 cases, one was dismissed with prejudice, one is pending appeal before the U.S. Court of Appeals for the 11th Circuit, and the remaining cases are pending adjudication in U.S. Federal District Courts.

b. Reimbursement to the Judgment Fund

During FY 2012, the Agency was required to reimburse the Judgment Fund \$175,000, in connection with the one settled civil case. No amount was separately designated for the payment of attorney's fees. This is \$50,000 less than the amount the Agency was required to reimburse to the Judgment Fund in FY 2011.

c. Disciplinary Actions (5 C.F.R. § 724.302 (a)(3) & (5))

There were no employees disciplined in FY 2012 in connection with any cases described in paragraph (a) above, or for any other conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes prohibited personnel practices.

d. Final Year-End Data Posted Under Section 301(c)(1)(B)

The final year-end data posted pursuant to section 301(c)(1)(B) of the No FEAR Act is included in Appendix 1.

The final year-end data indicates that during FY 2012, there were 76 new administrative complaints of discrimination filed by 75 employees or applicants for employment. One Agency employee filed more than one complaint during the reporting period. Within the total inventory of 205 complaints, EPA's Office of Civil Rights (OCR) conducted 105 pre-complaint counselings; 61 investigations; and closed 49 cases including 13 final agency decisions, 11 final agency orders, 12 settlements, 3 dismissals and 11 withdrawals. There was one finding of discrimination in FY 2012.

FY 2012 complaint totals can be found in their entirety at Appendix 1 of this report.

e. Policy Description on Disciplinary Actions (5 C.F.R. § 724.302(a)(6))

The FY 2012 Agency EEO policy addresses a variety of topics including the prohibition of discrimination in the workplace and a reminder to all employees that the agency will review any finding of discrimination and take appropriate disciplinary or corrective action. The EEO policy, as well as information on addressing harassment and reasonable accommodation, was discussed in

the mandatory Successful Leaders program for all new Agency supervisors. The FY 2012 EEO Policy can be found in its entirety at Appendix 3 of this report.

Also, EPA Order 3110.6B, *Adverse Actions*, EPA Order 3120.1B, *Conduct and Discipline*, EPA Order 3120.2, *Conduct and Discipline Senior Executive Service* and applicable collective bargaining agreements, provide guidance to managers about the type of disciplinary actions that may be taken, when appropriate, in response to a finding of discriminatory behavior or conduct. Such actions may range from informal corrective actions such as a written warning to more formal disciplinary actions such as a suspension without pay or removal.

f. No FEAR Act Training Plans (5 C.F.R. § 724.302 (a)(9))

In FY 2011, OCR began a revamp of its entire web presence, to include a redesign of the NoFEAR Act online training. The redesigned training, was more user-friendly, interactive, and provided a more meaningful learning experience.

The EPA FY 2012 “*No FEAR Act Training Course*” was hosted on the EPA eLearning site. The EPA eLearning site is an Internet-based training tool designed to support cross-functional training development needs for EPA employees. The site can be accessed 24 hours a day, 7 days a week, from work or from home. This access allows for maximum flexibility to meet the No FEAR Act training requirements. OCR, the Regional EEO Officers and the Headquarters Program Management Officers closely tracked and monitored the successful completion of this training by individual offices, resulting in a 98% completion rate, Agency-wide, for the year. This percentage rate was a marked improvement from the 95% completion rate the previous year.

IV. ANALYSIS OF TRENDS, CAUSAL ANALYSIS AND PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE (5 C.F.R. § 724.302 (a)(7))

At the conclusion of FY 2012, the bases of alleged discrimination most often raised were: (1) retaliation; (2) sex; and (3) race. The 76 EEO complaints filed at EPA in FY 2012 contained 43 allegations of retaliation, 41 allegations of sex discrimination, and 39 allegations of race discrimination. While these totals are slightly higher than in the previous year, these totals are within the general average range of historical complaint totals for these bases. Considering the aggregate size of the workforce, the data shows that the 0.34% of the Agency workforce of 18,066 employees that has filed complaints. This number falls well below the government-wide average of 0.53% of the workforce who filed complaints in FY 2011. At the time of reporting, government-wide totals for FY 2012 were not yet available.

The Agency saw a 19% increase in the number of complaints filed from FY 2011 to FY 2012. We believe that the increase in administrative complaints filed can be attributed to the resource limitations in FY 12 as compared to FY 11, which resulted in fewer approvals for training opportunities, staff development and award dollars. We also believe that because 98% of EPA’s employees received training on the EEO laws, rights and remedies, this education identified the EEO process as a mechanism available to them to oppose otherwise fiduciarily dictated denials of opportunities.

EPA continues to stress training as a method for ultimately reducing the number of Federal court judgments, awards, and formal complaints as managers and supervisors expand their knowledge of their responsibilities to promote equal employment opportunity.

EPA completed investigations for complaints pending during FY 2012 with an average processing time of 349 days, slightly above the FY 2011 Government-wide average of 346 days. In FY 2012, the Agency focused heavily on the completion of FADs that originated prior to FY 2010. As a result, remarkable progress was made in reducing the backlog. In FY 2011, the Agency had 16 Final Agency Decisions (FADs) pending that were over 1,000 days old. At the end of the reporting period, the Agency had no FADs pending over 1,000 days old. The average age for FADs pending in FY 2012 was 517 days. The prioritization of older matters meant that the average age of completed cases went up. However, during FY 2013, the Agency will make significant efforts to improve the proportion of cases adjudicated timely. As a result, both the days-to-completion and timeliness rate are expected to improve dramatically

V. ADJUSTMENTS TO BUDGET (5 C.F.R. § 724.302(a)(2)(ii))

During FY 2012, the Agency was required to reimburse the Judgment Fund \$175,000, in connection with the one settled civil case. No amount was separately designated for the payment of attorney's fees.

VI. ACTIONS PLANNED OR TAKEN TO IMPROVE COMPLAINT OR CIVIL RIGHTS PROGRAMS (5 C.F.R. § 724.302 (a)(7)(iv))

Over the past year, EPA's civil rights program made significant progress, and the Administrator has taken several actions to strengthen EPA's commitment to civil rights, equal employment opportunity and diversity in the workplace:

- EPA has set a record 98% completion rate for training its employees under the NoFEAR Act.
- Within the EPA, every member of the Senior Executive Service now has a performance standard related to equal employment opportunity and diversity in the workplace. Senior managers must outline the specific initiatives and actions they have personally undertaken and the results or effectiveness of those actions. At the end of every performance cycle, the Director of the Office of Civil Rights, Performance Review Board members, and Executive Review Board members review these self-assessments to verify that the respective rating for the EEO performance standard is a reflection of the accomplishments listed.
- Informational materials about the benefits of ADR were made available throughout the Agency in print and on the Agency's website. The Agency also conducts training on ADR and how to avoid lengthy and costly EEO complaints. We will investigate why employees' participation rate in the ADR program is lower than anticipated by distributing an employee survey or similar assessment and take appropriate action based on the results of the investigation.
- EPA has taken steps to improve the timeliness of EEO investigations. Of particular note is the new requirement for contractors to deliver investigations on schedule or receive

reduced payment and/or terminate the contract. All EPA investigators and counselors received the required annual training and/or refresher training in accordance with MD 110.

- EPA works to comply with orders from administrative judges in a timely manner, and this is a factor that is included in the performance standard of the Assistant Director for the Office of Civil Rights, Employment Complaints Resolution Staff (ECRS). In addition, EPA has systems in place to ensure that the Agency initiates any monetary or other relief in a timely manner.
- In FY 2012, OCR's ECRS attended FAD writing training with EPA's Office of General Counsel, related to writing acceptance and dismissal letters, analyzing hostile work environment claims and conducting thorough investigations.
- OCR also continues to post all No FEAR statistics on the OCR website on a quarterly basis.
- Members of OCR management make presentations during the monthly new employee orientations to ensure that all new employees are notified of the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- In FY 2012, OCR worked to make critical changes to its counseling program by reducing the larger number of collateral counselors into a smaller, elite cadre of highly-trained professionals and by centralizing the assignment of counselors. During the limited time this new process has been in place, the timeliness, quality of EEO Counselor's Reports, and both the utilization and success rate for ADR have all significantly improved. For FY 2011, ADR offer rate was 29.9% and the acceptance rate was 19.6%. This year, the ADR offer rate was 84.7% and the acceptance rate was 33.7%, which demonstrates significant improvement.
- The Civil Rights Director and EEO Officials across the Agency participate in briefings, listening sessions, and brainstorming sessions to discuss EEO with managers, senior leaders and employees in order to identify and address any barriers and specific action items that can continue to improve the Agency's EEO and civil rights program.

APPENDIX 1

Equal Employment Opportunity Data Posted Pursuant to the No Fear Act: EPA (and below)

For 4th Quarter 2012 for period ending September 30, 2012

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2012Thru09-30
	2007	2008	2009	2010	2011	
Number of Complaints Filed	63	79	77	70	64	76
Number of Complainants	58	72	71	63	61	75
Repeat Filers	6	9	8	9	3	1
Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2012Thru09-30
	2007	2008	2009	2010	2011	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	32	42	33	39	25	39
Color	8	14	9	14	10	13
Religion	2	2	1	5	2	9
Reprisal	33	37	35	47	39	43
Sex	20	28	36	28	29	41
PDA	0	0	0	0	0	0

National Origin	8	10	6	14	10	13
Equal Pay Act	1	0	0	0	2	1
Age	27	28	37	28	21	35
Disability	18	16	25	21	24	23
Genetics	0	0	0	0	0	0
Non-EEO	0	1	0	0	1	8

Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2012Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2007	2008	2009	2010	2011	
Appointment/Hire	0	0	0	2	1	5
Assignment of Duties	5	12	6	18	12	11
Awards	1	4	2	6	2	5
Conversion to Full-time	0	1	0	0	0	2
Disciplinary Action						
Demotion	0	1	0	0	0	0
Reprimand	2	3	3	3	3	2
Suspension	3	0	2	2	3	2
Removal	0	0	1	0	1	2
Other	1	0	0	3	2	4
Duty Hours	0	0	0	1	3	3
Evaluation Appraisal	8	17	9	14	11	21
Examination/Test	0	0	0	0	1	0
Harassment						
Non-Sexual	27	30	36	35	29	30

Sexual	0	1	0	1	1	1
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	3	5	2	3	4	4
Promotion/Non-Selection	21	28	24	24	18	25

Reassignment

Denied	3	1	0	4	3	2
Directed	2	2	2	6	1	4
Reasonable Accommodation	8	3	6	2	8	7
Reinstatement	0	0	0	0	0	0
Retirement	0	0	1	0	0	1
Termination	5	4	7	4	9	5
Terms/Conditions of Employment	10	11	8	16	10	18
Time and Attendance	7	13	7	6	6	17
Training	2	6	7	6	4	10
Other	2	0	0	0	0	7

Comparative Data

Processing Time	Previous Fiscal Year Data					2012Thru09-30
	2007	2008	2009	2010	2011	

Complaints pending during fiscal year

Average number of days in investigation	228.02	205.84	217.32	216.85	236.82	348.80
Average number of days in final action	224.72	261.40	192.96	205.02	398.16	319.77

Complaint pending during fiscal year where hearing was requested

Average number of days in investigation	229.46	215.97	211.79	208.86	242.18	354.84
Average number of days in final action	107.86	44.22	125.75	15.08	154.67	136.53
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation	226.00	183.18	225.34	228.69	218.60	337.41
Average number of days in final action	327.56	354.48	224.59	403.22	564.18	569.64
Complaints Dismissed by Agency	Comparative Data					
	Previous Fiscal Year Data					2012Thru09-30
	2007	2008	2009	2010	2011	
Total Complaints Dismissed by Agency	16	11	10	7	10	3
Average days pending prior to dismissal	303	339	111	308	981	434
Complaints Withdrawn by Complainants						
Total Complaints Withdrawn by Complainants	10	8	3	2	4	11
Total Final Agency Actions Finding Discrimination	Comparative Data					
	Previous Fiscal Year Data					2012Thru09-30
	2007	2008	2009	2010	2011	
	# %	# %	# %	# %	# %	# %
Total Number	0	0	0	0	0	1

Findings												
Without Hearing	0	0	0	0	0	0	0	0	0	0	1	100
With Hearing	0	0	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2012Thru09-30	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	2007		2008		2009		2010		2011			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		0		1	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	1	100
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

Findings After Hearing	0		0		0		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		0		0		0		1	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	1	100
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0

Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2012Thru09-30	
	2007		2008		2009		2010		2011			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		0		1	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	1	100

Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to	0	0	0	0	0	0	0	0	0	0	0	0

Full-time												
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non- Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0

Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		0		0		0		1	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	1	100
Sexual	0	0	0	0	0	0	0	0	0	0	0	0

Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					
	Previous Fiscal Year Data					2012Thru09-30
	2007	2008	2009	2010	2011	
Total complaints from previous Fiscal Years	88	75	95	122	116	121
Total Complainants	70	70	87	107	94	105
Number complaints pending						
Investigation	3	4	4	3	10	6
ROI issued, pending	0	0	0	1	0	3

Complainant's action						
Hearing	0	3	9	12	32	36
Final Agency Action	17	18	43	35	22	18
Appeal with EEOC Office of Federal Operations	0	0	0	0	1	0
Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2012Thru09-30
	2007	2008	2009	2010	2011	
Pending Complaints Where Investigations Exceed Required Time Frames	9	19	13	10	25	32

APPENDIX 2

Anti-Harassment Policy

MEMORANDUM

FROM: Administrator Lisa P. Jackson

TO: All EPA Employees

As a matter of policy, harassment of any kind will not be tolerated at the U.S. Environmental Protection Agency. When harassment is directed at an individual because of a lawfully protected basis and is sufficiently severe or pervasive that it creates a hostile work environment or takes the form of a tangible employment action, it is unlawful. It is EPA policy to ensure that appropriate measures are implemented to prevent harassment, either sexual or nonsexual, in the workplace and to correct harassing conduct before it becomes severe or pervasive. EPA policy also strictly prohibits any retaliation against an employee who reports a concern about workplace harassment or assists in any inquiry about such a report.

For the purposes of this policy, unlawful harassment is defined as any unwelcome verbal or physical conduct based on race; color; sex, including pregnancy and gender identity/expression; national origin; religion; age; prior protected EEO activity; protected genetic information; sexual orientation or status as a parent when:

- a) the behavior can reasonably be considered to adversely affect the work environment; or
- b) an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Sexual harassment can be either a form of harassment based on a person's sex that need not involve conduct of a sexual nature or harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature when:

- a. submission to such conduct is made explicitly or implicitly a term or condition of an employee's job, pay or career;
- b. submission to or rejection of such conduct by an employee is used as a basis for career or employment decisions affecting that employee; or
- c. such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creates an intimidating, hostile or offensive environment.

Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.

Examples of workplace harassment include:

- Oral or written communications that contain offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the lawfully protected bases set forth above.
- Nonverbal conduct, such as staring, leering and giving inappropriate gifts.
- Physical conduct, such as assault or unwanted touching.
- Visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.

The EPA does not permit harassment by or against anyone in the workplace. This includes any employee, applicant for EPA employment, grantee, contractor, Senior Environmental Employment enrollee or Federal Advisory Committee Act member. Workplace harassment should be reported immediately by the affected person to a first-line supervisor, a higher-level supervisor or manager in her or his chain of command, the Office of Inspector General or Labor and Employee Relations staff, as appropriate. Supervisors, in consultation with their human resources or legal offices, must conduct prompt, thorough and impartial inquiries.

If necessary and to the extent possible, measures must be taken to safeguard the anonymity of employees who file complaints. If management, in consultation with legal counsel, determines that harassment has occurred, it must be corrected as soon as possible. Harassing conduct by EPA employees need not rise to the level of unlawful harassment for it to constitute misconduct subject to corrective or disciplinary action.

In addition, EPA employees or applicants for employment may also use the complaint process established by the Equal Employment Opportunity Commission to file a complaint of harassment based on race, color, sex, religion, national origin, age, disability, prior protected EEO activity and protected genetic information for individual redress. To invoke that process, EPA employees and applicants must contact an EEO counselor within 45 days of an alleged incident of harassment. Reporting harassment to a supervisor in accordance with the previous paragraph does not satisfy this requirement and does not invoke the EEOC's process. EPA employees or applicants for employment may also report harassment based on sexual orientation and status as a parent to the EPA Office of Civil Rights.

Should you have any questions or need additional information about this policy, please contact the EPA Office of Human Resources at (202) 564-4600 or the EPA Office of Civil Rights at (202) 564-7272.

APPENDIX 3

MEMORANDUM

SUBJECT: 2012 Equal Employment Opportunity Policy Statement

FROM: Lisa P. Jackson

TO: All Employees

Fostering a fair and diverse work environment is essential to our work as One EPA and our service to the American people. I am proud to reaffirm today the U.S. Environmental Protection Agency's commitment to equal employment opportunity in the workplace.

The EPA cannot and will not tolerate discrimination based on race; color; religion; sex, including pregnancy and gender identity or gender expression; national origin; physical or mental disability; age; genetic information; sexual orientation; status as a parent; marital status; political affiliation; or retaliation based on previous EEO activity. Harassment – sexual or conduct – of any employee or applicant for employment is also unacceptable and prohibited by law.

I expect our management team to continue to provide first-class leadership in support of equal employment opportunity. I also ask that EPA managers and employees take responsibility for treating each other with dignity and respect, reporting discriminatory conduct and preventing all types of discrimination, including harassment. The agency will review any finding of discrimination and take appropriate disciplinary or corrective action.

The EPA promotes the use of alternative dispute resolution methods to resolve workplace disputes or EEO complaints. Managers are reminded that their participation in agency-approved alternative dispute resolution efforts to resolve employee EEO complaints is required, absent extraordinary circumstances as determined by the Office of Civil Rights' director or designee.

Any employee, manager or applicant for employment who believes he or she has been subjected to discrimination has a right to seek redress by contacting the EPA's Office of Civil Rights' employment complaints resolution staff at (202) 564-7272 or an EEO officer at the regional or laboratory level within 45 calendar days of the alleged discriminatory event.

A professional, productive and inclusive workplace is essential to the EPA's mission to protect human health and the environment. Unlawful discrimination in the workplace, including retaliation and harassment, undermines the achievement of our agency's mission. I appreciate your shared commitment to equal opportunity at the EPA, and look forward to continuing our work together.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

NATIONAL ENVIRONMENTAL EDUCATION ADVISORY COUNCIL

1. Committee's Official Designation (Title):

National Environmental Education Advisory Council

2. Authority:

This charter renews the National Environmental Education Advisory Council (NEEAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The NEEAC was created by Congress to advise, consult with, and make recommendations to the Administrator of the Environmental Protection Agency (EPA) on matters related to activities, functions and policies of EPA under the National Environmental Education Act (the Act). 20 U.S.C. § 5508(b).

3. Objectives and Scope of Activities:

The NEEAC will provide advice, information, and make recommendations on matters related to activities, functions and policies of EPA under the Act.

The major objectives are to provide advice and recommendations on:

- a. The biennial report to Congress assessing environmental education in the United States (§ 9(d)(1) of the Act).
- b. EPA's solicitation, review, and selection processes for the training and grant programs
- c. The merits of individual proposals to operate the § 5 training program and the § 6 grant program, as requested by EPA.
- d. Overall implementation of the Act.

4. Description of Committees Duties:

The duties of the NEEAC are to provide advice to EPA.

5. Official(s) to Whom the Committee Reports:

The NEEAC will submit advice and recommendations and report to the EPA Administrator through the Office of External Affairs and Environmental Education (OEAE).

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Environmental Education, within the Office of External Affairs and Environmental Education (OEAE), under the Office of the Administrator.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the NEEAC is \$140,000 which includes 0.7 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The NEEAC expects to meet approximately one (1) to two (2) times a year, subject to the availability of appropriations. EPA will pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the NEEAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552(b) of Title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the NEEAC.

10. Duration and Termination:

The Act specifically exempts the NEEAC from section 14(a) of the Federal Advisory Committee Act relating to termination 20 U.S.C. § 5508(b)(6). The NEEAC, however, will file a new charter every two years.

11. Member Composition:

The NEEAC will be composed of eleven (11) members appointed by the EPA Administrator, or designee, after consultation with the Secretary of the U.S. Department of Education. Members will serve as Special Government Employees (SGE), however, the conflict of interest provision at 18 U.S.C. § 208(a) does not apply to members' participation in particular matters which affect the financial interests of their employers. 20 U.S.C. § 5508(b)(2). SGE pay rates will be determined by EPA's Administrator, but may not exceed the daily equivalent of the annual rate for a GS-18 Federal employee.

As required by the Act, the membership of the NEEAC will consist of: two members representing primary and secondary education (including one classroom teacher); two members representing colleges and universities; two members representing not-for-profit organizations involved in environmental education; two members representing State departments of education and natural resources; two members representing business and industry; and one member representing senior Americans. In addition, a representative of the Secretary of Education will serve as an ex officio member and a representative of the National Environmental Education and Training Foundation may serve as an advisor to the NEEAC.

12. Subgroups:

EPA, or the NEEAC with EPA's approval, may form NEEAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the NEEAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Section 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

November 1, 2012

Agency Approval Date

NOV 09 2012

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

NATIONAL ADVISORY COUNCIL FOR ENVIRONMENTAL POLICY AND TECHNOLOGY

1. Committee's Official Designation (Title):

National Advisory Council for Environmental Policy and Technology

2. Authority:

This charter renews the National Advisory Council for Environmental Policy and Technology (NACEPT) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NACEPT is in the public interest and supports EPA in performing its duties and responsibilities.

3. Objectives and Scope of Activities:

NACEPT's scope involves advising the EPA Administrator on broad, crosscutting issues associated with EPA's environmental management on matters relating to activities and functions under federal environmental statutes, executive orders, regulations, and policies. NACEPT advises on ways to improve the development and implementation of domestic and international environmental management policies, programs, and technologies.

The major objectives are to provide advice and recommendations on:

- a. Identifying approaches to improve the development and implementation of domestic and international environmental management policies and programs;
- b. Providing guidance on how EPA can most efficiently and effectively implement innovative approaches throughout the Agency and its programs;
- c. Identifying approaches to enhance information and technology planning;
- d. Fostering improved approaches to environmental management in the fields of economics, finance, and technology;
- e. Increasing communication and understanding among all levels of government, business, non-governmental organizations, and academia, with the goal of increasing non-federal resources and improving the effectiveness of federal and non-federal resources directed at solving environmental problems;

- f. Implementing statutes, executive orders and regulations; and
- g. Reviewing progress in implementing statutes, executive orders and regulations.

4. Description of Committee's Duties:

The duties of the NACEPT are solely to provide advice to EPA.

5. Official(s) to Whom the Committee Reports:

NACEPT will submit advice and recommendations and report to the EPA Administrator through the Office of Federal Advisory Committee Management and Outreach.

6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Federal Advisory Committee Management and Outreach.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of the NACEPT Council and its subcommittees is \$600,000 which includes 2.5 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

NACEPT generally meets three times a year. Meetings may occur approximately once every four months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the NACEPT will hold open meetings unless the Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of section 552b of title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the NACEPT.

10. Duration and Termination:

NACEPT will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After the initial two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The NACEPT Council will be composed of approximately twenty-five (25) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from federal, state, local and tribal governments, the finance, banking, and legal communities, business and industry, professional and trade associations, environmental advocacy groups, national and local environmental non-profit groups, including public interest groups, and academic institutions.

12. Subgroups:

EPA, or NACEPT with EPA approval, may form NACEPT subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the NACEPT for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

May 31, 2012

Agency Approval Date

June 1, 2012

GSA Consultation Date

JUN - 8 2012

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

1. **Committee's Official Designation (Title):**

Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel

2. **Authority:**

This charter renews the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The FIFRA SAP is in the public interest and supports EPA in performing its duties and responsibilities. The original Panel was created on November 28, 1975, pursuant to Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by Public Law 94-140, Public Law 95-396, and Public Law 96-539. In accordance with this statute, the Panel terminated on September 30, 1981. It was reestablished by the Administrator pursuant to the Federal Advisory Committee Act (FACA) and Section 21(b) of FIFRA on April 25, 1983, and then reauthorized as a statutory committee by amendment to the FIFRA dated December 2, 1983 (Public Law 98-201). Under FIFRA (Public Law 98-201), the statutory Panel terminated on September 30, 1987. It was administratively reestablished on October 1, 1987 by the Administrator pursuant to FACA until reauthorized as a statutory Panel by amendment to the FIFRA, dated October 25, 1988 (Public Law 100-532). Section 104 of the Food Quality Protection Act of 1996 (Public Law 104-170) establishes a Science Review Board consisting of sixty scientists who shall be available to the Scientific Advisory Panel on an ad hoc basis to assist in reviews conducted by the Panel.

3. **Objectives and Scope of Activities:**

FIFRA SAP will provide comments, evaluations, and recommendations on pesticides and pesticide-related issues as to the impact on health and the environment of regulatory actions.

The major objectives are to provide comments, evaluations, and recommendations on:

- a. The impact on health and the environment of matters arising under Sections 6(b), 6(c) and 25(a) of FIFRA
- b. Analyses, reports and operating guidelines to improve the effectiveness and quality of scientific analyses made by EPA
- c. Analyses Guidelines to improve the effectiveness and quality of scientific testing and of data submitted to EPA
- d. Methods to ensure that pesticides do not cause "unreasonable adverse effects on the environment," as defined in Section 2 (bb) of FIFRA

- e. Major scientific studies (whether conducted by EPA or other parties) supporting actions under Sections 6(b), 6(c), and 25(a) of FIFRA
- f. Major pesticide and pesticide-related scientific studies and issues in the form of a peer review

4. Description of Committees Duties:

The duties of the FIFRA SAP are solely to provide advice to the EPA.

5. Official(s) to Whom the Committee Reports:

The FIFRA SAP will report to the EPA Administrator through the EPA's Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP).

6. Agency Responsible for Providing the Necessary Support:

The EPA will be responsible for financial and administrative support. Within the EPA, this support will be provided by the Office of Chemical Safety and Pollution Prevention (OCSPP).

7. Estimated Annual Operating Costs and Person Years:

The estimated annual operating cost of FIFRA SAP is \$1,940,000 which includes 7.0 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of the EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The FIFRA SAP expects to meet approximately eight (8) times a year. Meetings may occur approximately once every one and a half (1½) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, FIFRA SAP will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552(b) of Title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the FIFRA SAP.

10. Duration and Termination:

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

As required by FIFRA, the FIFRA SAP will be composed of seven members, including the Chairperson, and members will be selected from nominees provided by the National Institutes of Health (NIH) and the National Science Foundation (NSF). Members will serve as Special Government Employees (SGE) or Regular Government Employees (RGE). In selecting members, EPA will consider candidates on the basis of their professional qualifications to assess the effects of pesticides on health and the environment. To the extent feasible, the panel membership will include representation of the following disciplines: toxicology, pathology, environmental biology, and related sciences (e.g., pharmacology, biotechnology, bio-chemistry, bio-statistics).

12. Subgroups:

The EPA, or FIFRA SAP with EPA's approval, may form FIFRA SAP subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the FIFRA SAP for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

October 15, 2012

Agency Approval Date

OCT 19 2012

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

1. Committee's Official Designation (Title):

Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel

2. Authority:

This charter renews the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The FIFRA SAP is in the public interest and supports EPA in performing its duties and responsibilities. The original Panel was created on November 28, 1975, pursuant to Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by Public Law 94-140, Public Law 95-396, and Public Law 96-539. In accordance with this statute, the Panel terminated on September 30, 1981. It was reestablished by the Administrator pursuant to the Federal Advisory Committee Act (FACA) and Section 21(b) of FIFRA on April 25, 1983, and then reauthorized as a statutory committee by amendment to the FIFRA dated December 2, 1983 (Public Law 98-201). Under FIFRA (Public Law 98-201), the statutory Panel terminated on September 30, 1987. It was administratively reestablished on October 1, 1987 by the Administrator pursuant to FACA until reauthorized as a statutory Panel by amendment to the FIFRA, dated October 25, 1988 (Public Law 100-532). Section 104 of the Food Quality Protection Act of 1996 (Public Law 104-170) establishes a Science Review Board consisting of sixty scientists who shall be available to the Scientific Advisory Panel on an ad hoc basis to assist in reviews conducted by the Panel.

3. Objectives and Scope of Activities:

FIFRA SAP will provide comments, evaluations, and recommendations on pesticides and pesticide-related issues as to the impact on health and the environment of regulatory actions.

The major objectives are to provide comments, evaluations, and recommendations on:

- a. The impact on health and the environment of matters arising under Sections 6(b), 6(c) and 25(a) of FIFRA
- b. Analyses, reports and operating guidelines to improve the effectiveness and quality of scientific analyses made by EPA
- c. Analyses Guidelines to improve the effectiveness and quality of scientific testing and of data submitted to EPA
- d. Methods to ensure that pesticides do not cause "unreasonable adverse effects on the environment," as defined in Section 2 (bb) of FIFRA

- e. Major scientific studies (whether conducted by EPA or other parties) supporting actions under Sections 6(b), 6(c), and 25(a) of FIFRA
- f. Major pesticide and pesticide-related scientific studies and issues in the form of a peer review

4. Description of Committees Duties:

The duties of the FIFRA SAP are solely to provide advice to the EPA.

5. Official(s) to Whom the Committee Reports:

The FIFRA SAP will report to the EPA Administrator through the EPA's Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP).

6. Agency Responsible for Providing the Necessary Support:

The EPA will be responsible for financial and administrative support. Within the EPA, this support will be provided by the Office of Chemical Safety and Pollution Prevention (OCSPP).

7. Estimated Annual Operating Costs and Person Years:

The estimated annual operating cost of FIFRA SAP is \$1,940,000 which includes 7.0 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of the EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

The FIFRA SAP expects to meet approximately eight (8) times a year. Meetings may occur approximately once every one and a half (1½) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, FIFRA SAP will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552(b) of Title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the FIFRA SAP.

10. Duration and Termination:

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

As required by FIFRA, the FIFRA SAP will be composed of seven members, including the Chairperson, and members will be selected from nominees provided by the National Institutes of Health (NIH) and the National Science Foundation (NSF). Members will serve as Special Government Employees (SGE) or Regular Government Employees (RGE). In selecting members, EPA will consider candidates on the basis of their professional qualifications to assess the effects of pesticides on health and the environment. To the extent feasible, the panel membership will include representation of the following disciplines: toxicology, pathology, environmental biology, and related sciences (e.g., pharmacology, biotechnology, bio-chemistry, bio-statistics).

12. Subgroups:

The EPA, or FIFRA SAP with EPA's approval, may form FIFRA SAP subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the FIFRA SAP for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

Agency Approval Date

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

CHILDREN'S HEALTH PROTECTION ADVISORY COMMITTEE

1. **Committee's Official Designation (Title):**

Children's Health Protection Advisory Committee

2. **Authority:**

This charter renews the Children's Health Protection Advisory Committee (CHPAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. CHPAC is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities under Executive Order 13045 of April 21, 1997 (62 Fed. Reg. 19885 (April 23, 1997)).

3. **Objectives and Scope of Activities:**

CHPAC is a policy-oriented committee that will provide policy advice, information and recommendations to assist EPA in the development of regulations, guidance and policies to address children's environmental health.

The major objectives are to provide policy advice and recommendations on:

- a. Policy issues associated with regulations, economics, and outreach/communications to address prevention of adverse health effects to children, and improve the breadth and depth of analyses related to these efforts;
- b. Critical policy and technical issues relating to children's health.

4. **Description of Committees Duties:**

The duties of CHPAC are solely to provide policy advice to EPA.

5. **Official(s) to Whom the Committee Reports:**

CHPAC will provide policy advice and recommendations and report to the EPA Administrator.

6. **Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Children's Health Protection, Office of the

Administrator.

7. Estimated Annual Operating Costs and Work Years:

The estimated annual operating cost of CHPAC is \$395,000, which includes 1.0 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

CHPAC expects to meet approximately three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the CHPAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the CHPAC.

10. Duration and Termination:

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

CHPAC will be composed of approximately 20-30 members. Members will serve as Representatives of non-Federal interests, Regular Government Employees (RGE), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by specific organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from Federal, State, local and Tribal governments, the regulated community, public interest groups, health care organizations and academic institutions.

12. Subgroups:

EPA, or the CHPAC with EPA's approval, may form CHPAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations

and advice to the chartered CHPAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the EPA.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

August 19, 2013

Agency Approval Date

September 4, 2013

GSA Consultation Date

SEP 13 2013

Date Filed with Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

Farm, Ranch, and Rural Communities Advisory Committee

1. Committee's Official Designation (Title):

Farm, Ranch, and Rural Communities Advisory Committee

2. Authority:

This charter renews the Farm, Ranch, and Rural Communities Advisory Committee (FRRCC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The FRRCC is in the public interest and supports EPA in performing its duties and responsibilities.

3. Objectives and Scope of Activities:

The FRRCC is a policy-oriented committee that will provide policy advice, information, and recommendations to the Administrator on a range of environmental issues and policies that are of importance to agriculture and rural communities.

It is intended that the members of the committee will address specific topics of unique relevance to agriculture as identified by the Agricultural Counselor to the Administrator, in such a way as to provide thoughtful advice and useful insights to the Agency as it crafts environmental policies and programs that affect and engage agriculture and rural communities.

4. Description of Committee's Duties:

The duties of the FRRCC are solely to provide advice to EPA.

5. Official(s) to Whom the Committee Reports:

The FRRCC will report its policy advice and recommendations to the EPA Administrator through the Agricultural Counselor.

6. Agency Responsible for Providing the Necessary Support:

EPA's Office of the Administrator will be responsible for financial and administrative support.

7. Estimated Annual Operating Costs and Person-Years:

The estimated annual operating cost of the FRRCC is \$500,000 which includes 2.0 person-years of support.

8. Designated Federal Officer:

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. Estimated Number and Frequency of Meetings:

FRRCC expects to meet approximately two (2) times a year. Meetings may occur approximately once every six (6) months or as needed and approved by the Designated Federal Officer (DFO). Meetings will generally be held in Washington, DC. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the FRRCC will hold open meetings unless the Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the FRRCC.

10. Duration and Termination:

The FRRCC will be examined annually and will exist until the EPA determines that the Committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this two year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

11. Member Composition:

The FRRCC will be composed of approximately thirty (30) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by specific organizations, associations, or classes of individuals. Individuals who are actively engaged in farming or ranching will be encouraged to apply. In selecting members, EPA will consider candidates from academia, industry (e.g., farm groups and allied industries), non-governmental organizations, and state, local, and tribal governments.

12. Subgroups:

EPA, or the FRRCC with EPA's approval, may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered committee for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the EPA.

13. Recordkeeping:

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

January 24, 2014

Agency Approval Date

February 3, 2014

GSA Consultation Date

Date Filed with Congress

**U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Fiscal Year 2013

Annual Report to Congress
Pursuant to the
Notification and Federal Employee
Antidiscrimination and Retaliation
Act of 2002

TABLE OF CONTENTS

Executive Summary	1
Background	1
Data	2
Analysis of Trends and Practical Knowledge Gained	4
Adjustment to Budget	5
Actions Planned or Taken to Improve Programs.....	6
APPENDIX 1	
No FEAR 2013 Fiscal Year Totals	9
APPENDIX 2	
Anti Harassment Policy Statement	22
APPENDIX 3	
2013 EEO Policy Statement.....	24

I. EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency (EPA or Agency) provides its Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174. As required, this report includes information related to the number of cases in Federal court pending or resolved in fiscal year (FY) 2013 and, in connection with those cases, their disposition; reimbursement(s) to the Judgment Fund; and the number of employees disciplined and the nature of the disciplinary action taken.

During FY 2013, there were a total of 12 cases pending before Federal courts. Among these cases, there were 9 claims of violation of Title VII of the Civil Rights Act of 1964; 4 claims of violations of the Rehabilitation Act; 4 claims of violation of the Age Discrimination in Employment Act; one claim of violation of the Equal Pay Act, and one claim of violation of 5 USC 2302.

Of the 12 cases noted above, one was settled during the reporting period. The settlement involved a total payment of \$500, all of which was designated for the payment of attorney's fees. This settlement amount was reimbursed to the Judgment Fund.

Of the remaining 11 cases, 3 were dismissed with prejudice, 2 are currently pending decisions on dispositive motions, one is pending a decision before the U.S. Court of Appeals for the Third Circuit, one is under settlement negotiations, and the remaining cases are at the discovery stage in U.S. Federal District Courts.

II. BACKGROUND

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," or, as it is more commonly known, the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107-174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Public Law 107-174, Title I, General Provisions, section 101(1).

Section 203 of the No FEAR Act requires that each Federal agency submit an annual Report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal court cases pending or resolved in each fiscal year and arising under each of the respective areas of law specified in the Act in which discrimination or retaliation was alleged. In connection with those cases, agencies must report the status or disposition of the cases; the amount of money required to be reimbursed to the judgment fund; and the number of employees disciplined. Agencies must also report on any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual, or committed a prohibited personnel practice; any employees disciplined under such a policy for conduct inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws;

and an analysis of the data collected with respect to trends, causal analysis, and other information.

The Act imposes additional duties upon Federal agency employers intended to reinvigorate their longstanding obligation to provide a work environment free of discrimination and retaliation. The additional obligations contained in the No FEAR Act can be broken down into five categories:

- A Federal agency must reimburse the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal employment discrimination laws, Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws.
- An agency must provide annual notice to its employees, former employees, and applicants for Federal employment concerning the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- At least every two years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and whistleblower protection laws.
- Quarterly, an agency must post on its public website summary statistical data pertaining to EEO complaints filed with the agency.

The President delegated responsibility to the Office of Personnel Management (OPM) for issuance of regulations governing implementation of Title II of the No FEAR Act. OPM published final regulations on the reimbursement provisions of the Act on May 10, 2006; final regulations to carry out the notification and training requirements of the Act were published on July 20, 2006; and the final regulations to implement the reporting and best practices provisions of the No FEAR Act on December 28, 2006. The Equal Employment Opportunity Commission (EEOC) published its final regulations to implement the posting requirements of Title III of the No FEAR Act on August 2, 2006. The EPA has prepared this report based on the provisions of the No FEAR Act in accordance with OPM and EEOC's final regulations.

III. DATA

a. Civil Cases

Section 203(a)(1) of the No FEAR Act requires that agencies include in their Annual Report "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged." Section 724.302 of OPM's final regulations on reporting and best practices clarifies section 203 (1) of the No FEAR Act stating that agencies report on the "number of cases in Federal Court [district and appellate] pending or resolved...arising under each of the respective provisions of the Federal Antidiscrimination laws and Whistleblower Protection Laws applicable to them...in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved."

During FY 2013, there were a total of 12 cases pending before Federal courts. Among these cases, there were 9 claims of violation of Title VII of the Civil Rights Act of 1964; 4 claims of violations of the Rehabilitation Act; 4 claims of violation of the Age Discrimination in Employment Act; one claim of violation of the Equal Pay Act, and one claim of violation of 5 USC 2302.

Of the 12 cases noted above, one was settled during the reporting period. The settlement involved a total payment of \$500, all of which was designated for the payment of attorney's fees. This settlement amount was reimbursed to the Judgment Fund.

Of the remaining 11 cases, 3 were dismissed with prejudice, 2 are currently pending decisions on dispositive motions, one is pending a decision before the U.S. Court of Appeals for the Third Circuit, one is under settlement negotiations, and the remaining cases are at the discovery stage in U.S. Federal District Courts.

b. Reimbursement to the Judgment Fund

During FY 2013, the Agency was required to reimburse the Judgment Fund \$500, all of which was designated for the payment of attorney's fees. This is \$174,500 less than the amount the Agency was required to reimburse to the Judgment Fund in FY 2012.

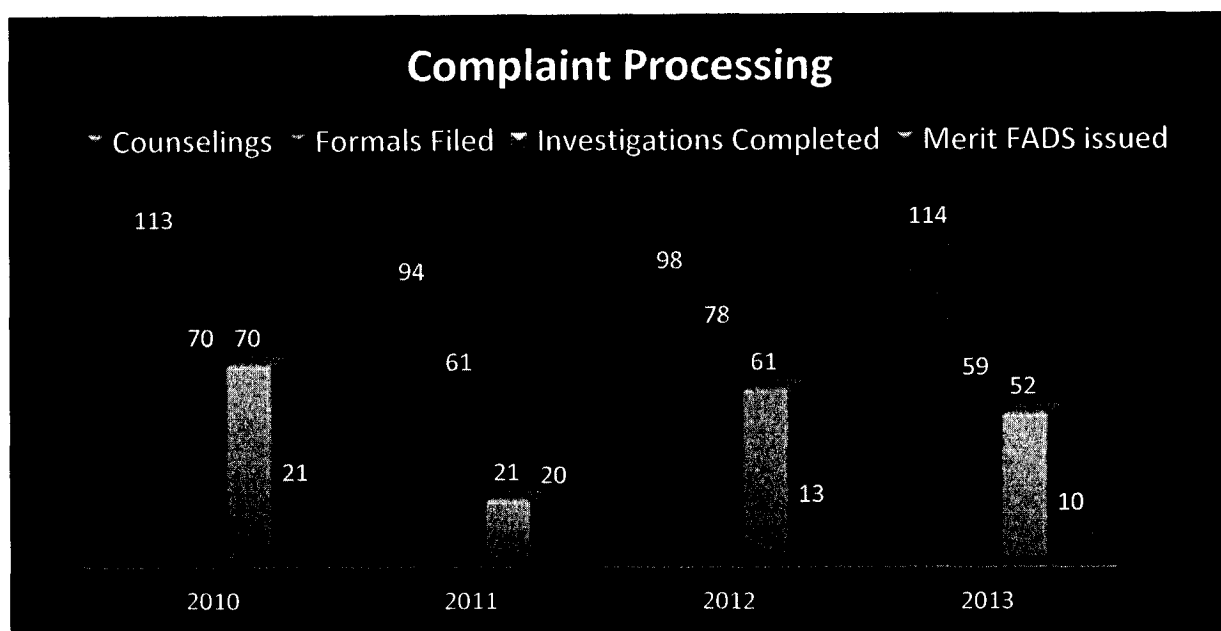
c. Disciplinary Actions (5 C.F.R. § 724.302 (a)(3) & (5))

There were no employees disciplined in FY 2013 in connection with any cases described in paragraph (a) above, or for any other conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes prohibited personnel practices.

d. Final Year-End Data Posted Under Section 301(c)(1)(B)

The final year-end data posted pursuant to section 301(c)(1)(B) of the No FEAR Act is included in Appendix 1.

The final year-end data indicates that during FY 2013, there was a 23% reduction in the number of formal complaints filed compared to FY 2012. In FY 2012, 76 formal complaints of discrimination were filed with the Agency. During FY 2013, there were only 59 new administrative complaints of discrimination filed by 56 employees or applicants for employment. Three Agency employees filed more than one complaint during the reporting period.



During FY 2013, EPA's Office of Civil Rights (OCR) procedurally dismissed 7 complaints. The average time to process a dismissal was 147 days, a 31% reduction from the FY 2012 processing average of 212 days pending prior to dismissal.

FY 2013 complaint totals can be found in their entirety at Appendix 1 of this report.

e. Policy Description on Disciplinary Actions (5 C.F.R. § 724.302(a)(6))

The FY 2013 Agency EEO policy addresses a variety of topics including the prohibition of discrimination in the workplace and a reminder to all employees that the agency will review any finding of discrimination and take appropriate disciplinary or corrective action. The EEO policy, as well as information on addressing harassment and reasonable accommodation, was discussed in the mandatory Successful Leaders program for all new Agency supervisors and in the new employee orientation sessions.

The FY 2013 EEO Policy can be found in its entirety at Appendix 3 of this report.

Additionally, EPA Order 3110.6B, *Adverse Actions*, EPA Order 3120.1B, *Conduct and Discipline*, EPA Order 3120.2, *Conduct and Discipline Senior Executive Service* and applicable collective bargaining agreements, provide guidance to managers about the type of disciplinary actions that may be taken, when appropriate, in response to a finding of discriminatory behavior or conduct. Such actions may range from informal corrective actions such as a written warning to more formal disciplinary actions such as a suspension without pay or removal.

EPA has an ongoing commitment to continue to include clear expectations EEO in performance standards for managers. EPA has maintained revised SES standards that not only focus on preventing discrimination in hiring activities and promoting merit systems principles, but also require senior leaders to be personally involved in leading and implementing EEO and civil rights initiatives consistent with applicable laws and executive orders. In addition, at the end of

every performance cycle, the Director of OCR, Performance Review Board members, and Executive Review Board members evaluate management self-assessments to ensure that the respective rating is an appropriate reflection of the accomplishments listed.

f. No FEAR Act Training Plans (5 C.F.R. § 724.302 (a)(9))

During FY 2013, we analyzed lessons learned from the EPA FY 2012 “*No FEAR Act Training Course*” that was hosted on the EPA eLearning site. The EPA eLearning site is an Internet-based training tool designed to support cross-functional training development needs for EPA employees. Based on input received from Agency employees regarding the 2012 training, we have contracted with Skillport to develop a more comprehensive training to include other areas such as discrimination based on gender stereotyping and the Genetic Information Nondiscrimination Act of 2008. We anticipate employees will be able to take the new training beginning Spring 2014. As with the 2012 NoFear Training, the eLearning site will be available for access 24 hours a day, 7 days a week, from work or home, allowing for maximum flexibility to meet the No FEAR Act training requirements. OCR, the Regional EEO Officers and the Headquarters Program Management Officers are planning to aggressively track and promote the successful completion of this training by individual offices, with a goal of reaching a 100% completion rate, Agency-wide, for the year.

IV. ANALYSIS OF TRENDS, CAUSAL ANALYSIS AND PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE (5 C.F.R. § 724.302 (a)(7))

At the conclusion of FY 2013, the bases of alleged discrimination most often raised were: (1) retaliation; (2) sex; and (3) age. The 59 EEO complaints filed at EPA in FY 2013 contained 29 allegations of retaliation, 26 allegations of sex discrimination, and 22 allegations of age discrimination. While retaliation and sex remain the top bases alleged in complaints filed for the second year in a row, these totals are not only significantly lower than in the previous year, they are the lowest in the previous 5 years worth of historical data. It should also be noted that retaliation and age are among the top three bases most frequently alleged in discrimination complaints throughout the entire Federal workforce.¹

The data shows that the 0.31% of the Agency workforce of 17,002 employees that has filed complaints. This falls well below the last reported government-wide average of 0.53% of the workforce who filed complaints. At the time of reporting, government-wide totals beyond FY 2011 were not yet available.

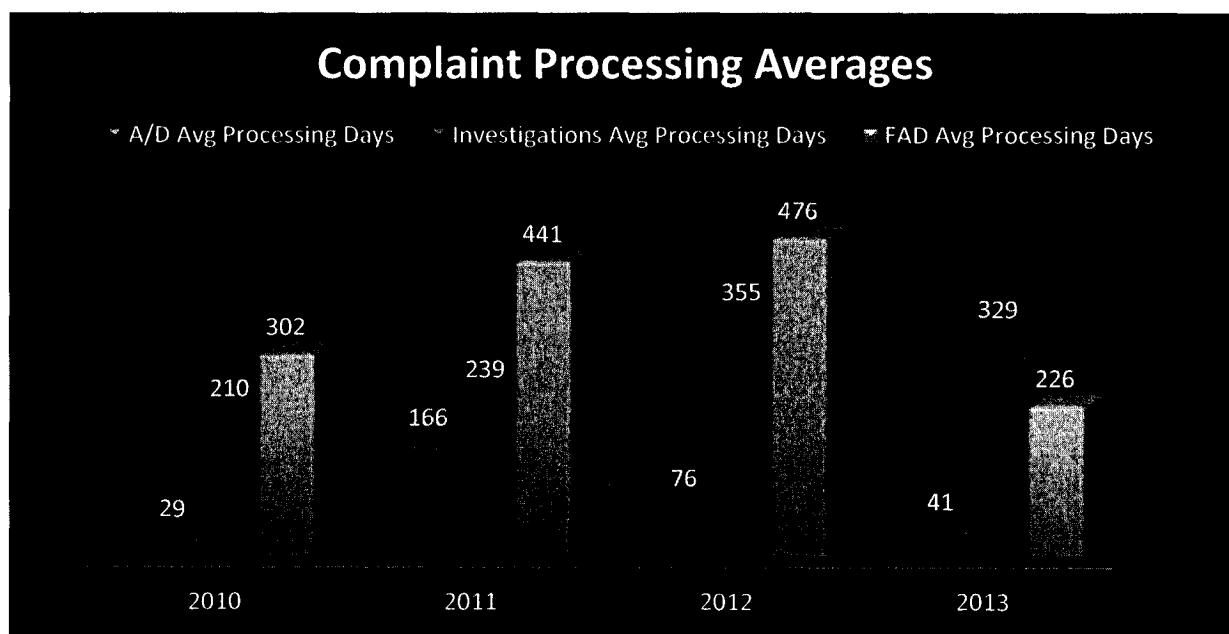
The Agency saw a 22% decrease in the number of complaints filed from FY 2012 to FY 2013. We attribute this in part to EPA’s reinvigorated emphasis on the use of Alternative Dispute Resolution (ADR) to facilitate the ability of managers to hear about allegations of unlawful discrimination and to have an opportunity to resolve them at the lowest possible level. EPA managers and supervisors are required to participate, absent extenuating circumstances, as reiterated by the Administrator in her 2013 annual EEO Policy Statement. By certifying and training more EEO counselors and providing informational materials about the benefits of ADR in print and electronically, EPA’s ADR participation rate during the informal process increased

¹ As reported in FY 2011 Report of the Federal Workforce. <http://www.eeoc.gov/federal/reports/fsp2011/index.cfm>

from 33.7% in FY 2012 to 49.41% in FY 2013. These efforts also increased EPA's rate of providing timely EEO counseling from 69.39% in FY 2012 to 92.11% in FY 2013. The Agency is currently developing an ADR program that would focus on increasing the number of cases in which ADR is offered in the formal complaint process which may increase our resolution rate. This program would continue to promote resolution at the lowest possible level by reengaging complainants and managers during the investigative stage of the complaint and attempt resolution prior to completing the investigation.

EPA continues to stress training as a method for ultimately reducing the number of Federal court judgments, awards, and formal complaints as managers and supervisors expand their knowledge of their responsibilities to promote equal employment opportunity.

EPA completed investigations for complaints pending during FY 2013 with an average processing time of 321 days, 31 days sooner than the Agency FY 2012 average of 352 days. The average age of FADs pending in FY 2013 was 261 days, almost half of our FY 2012 average of 533 days and the lowest the Agency has seen in the previous 4 years. As discussed in the FY 2012 NoFear Report, the Agency focused extensively on revamping and streamlining the investigative process and strategically alternating between the processing of older and newer matters to improve the proportion of cases adjudicated timely.



V. ADJUSTMENTS TO BUDGET (5 C.F.R. § 724.302(a)(2)(ii))

During FY 2012, the Agency was required to reimburse the Judgment Fund \$500 for the payment of attorney's fees.

VI. ACTIONS PLANNED OR TAKEN TO IMPROVE COMPLAINT OR CIVIL RIGHTS PROGRAMS (5 C.F.R. § 724.302 (a)(7)(iv))

In March 2011, Administrator Lisa P. Jackson appointed the Civil Rights Executive Committee, chaired by Deputy Administrator Bob Perciasepe, to recommend actions necessary for building a model civil rights program at the agency. After extensive review of the program, the Civil Rights Executive Committee submitted a final report, *Developing a Model Civil Rights Program for the Environmental Protection Agency*, to the Administrator outlining the agency's commitment to strengthening civil rights, equal employment opportunities, diversity in the workplace and revitalizing the agency's implementation of external civil rights laws. The Administrator approved the report and recommendations on April 13, 2012. On May 1, 2013, the Administrator approved the Agency Order which established the position of deputy civil rights official (DCRO) within each regional office and assistant administrator's office to serve as that office's primary point of accountability for assisting the OCR with effectively meeting the Agency's civil rights responsibilities and goals.

DCROs have broad oversight authority within their respective office or region for implementation of the civil rights program consistent with agency policy and directives, recognizing that offices or regions may need different staffing profiles for some functions. For example, Equal Employment Opportunity counselors are needed in every region, but at headquarters EEO counselors report to OCR rather than individual program offices. DCROs will identify and/or request adequate funding and resources for civil rights work and ensure their organizations have well-functioning policies, processes and management controls. Some of the activities that they will undertake include:

- Assuring that appropriate staff and expertise are available for their organizations to carry out an effective civil rights program including EEO counselors, alternate dispute resolution staff, special emphasis program managers and EEO officers.
- Developing and implementing the Equal Employment Opportunity Commission's Management Directive 715 Action Plans for their offices and regions that promote equal employment opportunity in a manner consistent with the agency's MD 715 Report, promote diversity and inclusion, and address other issues as required. Ensuring that the goals and objectives are communicated to subordinate management officials.
- Incorporating appropriate EEO and civil rights language into performance agreements as required for managers and as necessary for certain other positions.
- Facilitating informal EEO complaint resolution in conformance with Delegation 1-39, assuring the broad integration of well-functioning alternate dispute resolution approaches across the agency civil rights and employee relations activities and promoting the use of pre-complaint processes as a means of resolving EEO matters.

EPA's civil rights program has taken several other steps to strengthen EPA's commitment to civil rights, equal employment opportunity and diversity in the workplace:

- In FY 2013, OCR continued to make critical changes to its counseling program by offering monthly training teleconferences to all EEO Counselor's, organized and presented by OCR Employment Complaints Resolution Staff (ECRS) members to Agency EEO Officials. The timeliness and quality of EEO Counselor's Reports

continues to show marked improvement, and the utilization and success rate for ADR have all significantly improved.

- Within the EPA, every member of the Senior Executive Service continues to have a performance standard related to equal employment opportunity in the workplace. Senior managers must outline the specific initiatives and actions they have personally undertaken and the results or effectiveness of those actions. At the end of every performance cycle, the Director of the Office of Civil Rights, Performance Review Board members, and Executive Review Board members review these self-assessments to verify that the respective rating for the EEO performance standard is a reflection of the accomplishments listed.
- EPA has taken steps to improve the timeliness of EEO investigations. Of particular note is the new requirement for contractors to deliver investigations on schedule or receive reduced payment and/or terminate the contract.
- All EPA investigators and counselors continue to receive the required annual training and/or refresher training in accordance with MD 110.
- EPA works to comply with orders from administrative judges in a timely manner, and this is a factor that is included in the performance standard of the Assistant Director for the Office of Civil Rights, Employment Complaints Resolution Staff (ECRS). In addition, EPA has systems in place to ensure that the Agency initiates any monetary or other relief in a timely manner.
- In FY 2013, OCR's ECRS attended extensive FAD writing training as well as training related to writing acceptance and dismissal letters, analyzing hostile work environment claims and conducting thorough investigations.
- OCR also continues to post all No FEAR statistics on the OCR website on a quarterly basis.
- Members of OCR management make presentations during the monthly new employee orientations to ensure that all new employees are notified of the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- The Civil Rights Director and EEO Officials across the Agency participate in briefings, listening sessions, and brainstorming sessions to discuss EEO with managers, senior leaders and employees in order to identify specific action items that can continue to improve the Agency's EEO and civil rights program.

APPENDIX 1

Equal Employment Opportunity Data Posted Pursuant to the No Fear Act:

EPA (and below)

For 4th Quarter 2013 for period ending September 30, 2013

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
	2008	2009	2010	2011	2012	
Number of Complaints Filed	79	77	70	64	76	59
Number of Complainants	72	71	63	61	75	56
Repeat Filers	9	8	9	3	2	3

Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
	2008	2009	2010	2011	2012	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	42	33	39	25	39	21
Color	14	9	14	10	13	6
Religion	2	1	5	2	9	4
Reprisal	37	35	47	39	43	29
Sex	28	35	28	29	41	26
PDA	0	0	0	0	0	0
National Origin	10	6	14	10	13	12
Equal Pay Act	0	0	0	2	1	1
Age	28	37	28	21	35	22

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
	2008	2009	2010	2011	2012	
Disability	16	25	21	24	23	18
Genetics	0	0	0	0	0	0
Non-EEO	1	0	0	1	8	7

Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2008	2009	2010	2011	2012	
Appointment/Hire	0	0	2	1	5	5
Assignment of Duties	12	6	18	12	11	5
Awards	4	2	6	2	5	0
Conversion to Full-time	1	0	0	0	2	0

Disciplinary Action

Demotion	1	0	0	0	0	0
Reprimand	3	3	3	3	2	3
Suspension	0	2	2	3	2	4
Removal	0	1	0	1	2	0
Other	0	0	3	2	4	2
Duty Hours	0	0	1	3	3	2
Evaluation Appraisal	17	9	14	11	21	9
Examination/Test	0	0	0	1	0	0

Harassment

Non-Sexual	30	36	35	30	30	22
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Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2008	2009	2010	2011	2012	
Sexual	1	0	1	1	1	2
Medical Examination	0	0	0	0	0	0
Pay (Including Overtime)	5	2	3	4	4	1
Promotion/Non-Selection	28	24	24	18	25	9
Reassignment						
Denied	1	0	4	3	2	0
Directed	2	2	6	1	4	2
Reasonable Accommodation	3	6	2	8	7	8
Reinstatement	0	0	0	0	0	0
Retirement	0	1	0	0	1	0
Termination	4	7	4	9	5	4
Terms/Conditions of Employment	11	8	16	10	18	10
Time and Attendance	13	7	6	6	17	6
Training	6	7	6	4	10	2
Other	0	0	0	0	7	3
Processing Time	Comparative Data					
	Previous Fiscal Year Data					2013Thru09-30
	2008	2009	2010	2011	2012	
Complaints pending during fiscal year						
Average number of days in investigation	205.84	217.32	214.40	236.82	352.31	320.77

Complaints by Issue		Comparative Data					
		Previous Fiscal Year Data					2013Thru09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>		2008	2009	2010	2011	2012	
Average number of days in final action	261.40	192.96	171.29	398.16	318.42	147.95	
Complaint pending during fiscal year where hearing was requested							
Average number of days in investigation	215.97	211.79	204.77	242.18	347.38	325.31	
Average number of days in final action	44.22	125.75	0	154.67	134.36	55.45	
Complaint pending during fiscal year where hearing was not requested							
Average number of days in investigation	183.18	225.34	228.69	218.60	360.20	314.40	
Average number of days in final action	354.48	224.59	366.40	564.18	533.17	261.00	

Complaints Dismissed by Agency	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
Total Complaints Dismissed by Agency	1		2		3		3		10		7	
Average days pending prior to dismissal	64		62		75		232		212		147	
Complaints Withdrawn by Complainants												
Total Complaints Withdrawn by Complainants	8		3		2		4		11		19	
Total Final Agency Actions Finding Discrimination	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		1		0	
Without Hearing	0	0	0	0	0	0	0	0	1	100	0	0
With Hearing	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		1		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	1	100	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		0		0		0		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		0		0		1		0	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	0	0	1	100	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings of Discrimination	Comparative Data											

Rendered by Issue	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	0		0		0		0		1		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	1	100	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	0		0		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	0		0		0		0		1		0	

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	1	100	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2013Thru09-30	
	2008		2009		2010		2011		2012			
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Defined	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					
	Previous Fiscal Year Data					2013Thru09- 30
	2008	2009	2010	2011	2012	
Total complaints from previous Fiscal Years	70	90	117	111	119	136
Total Complainants	65	82	102	89	99	123
Number complaints pending						
Investigation	1	1	0	6	2	2
ROI issued, pending Complainant's action	0	0	1	0	4	3
Hearing	3	9	12	31	36	53
Final Agency Action	18	43	35	20	15	24
Appeal with EEOC Office of Federal Operations	15	14	15	18	22	27
Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2013Thru09- 30
	2008	2009	2010	2011	2012	
Pending Complaints Where Investigations Exceed Required Time Frames	14	7	5	20	14	18

APPENDIX 2

Anti-Harassment Policy

MEMORANDUM

FROM: Administrator Lisa P. Jackson

TO: All EPA Employees

As a matter of policy, harassment of any kind will not be tolerated at the U.S. Environmental Protection Agency. When harassment is directed at an individual because of a lawfully protected basis and is sufficiently severe or pervasive that it creates a hostile work environment or takes the form of a tangible employment action, it is unlawful. It is EPA policy to ensure that appropriate measures are implemented to prevent harassment, either sexual or nonsexual, in the workplace and to correct harassing conduct before it becomes severe or pervasive. EPA policy also strictly prohibits any retaliation against an employee who reports a concern about workplace harassment or assists in any inquiry about such a report.

For the purposes of this policy, unlawful harassment is defined as any unwelcome verbal or physical conduct based on race; color; sex, including pregnancy and gender identity/expression; national origin; religion; age; prior protected EEO activity; protected genetic information; sexual orientation or status as a parent when:

- a) the behavior can reasonably be considered to adversely affect the work environment; or
- b) an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Sexual harassment can be either a form of harassment based on a person's sex that need not involve conduct of a sexual nature or harassment involving any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature when:

- a. submission to such conduct is made explicitly or implicitly a term or condition of an employee's job, pay or career;
- b. submission to or rejection of such conduct by an employee is used as a basis for career or employment decisions affecting that employee; or
- c. such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creates an intimidating, hostile or offensive environment.

Sexual harassment need not involve members of the opposite sex and can be perpetrated by and against members of either sex.

Examples of workplace harassment include:

- Oral or written communications that contain offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the lawfully protected bases set forth above.
- Nonverbal conduct, such as staring, leering and giving inappropriate gifts.
- Physical conduct, such as assault or unwanted touching.
- Visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.

The EPA does not permit harassment by or against anyone in the workplace. This includes any employee, applicant for EPA employment, grantee, contractor, Senior Environmental Employment enrollee or Federal Advisory Committee Act member. Workplace harassment should be reported immediately by the affected person to a first-line supervisor, a higher-level supervisor or manager in her or his chain of command, the Office of Inspector General or Labor and Employee Relations staff, as appropriate. Supervisors, in consultation with their human resources or legal offices, must conduct prompt, thorough and impartial inquiries.

If necessary and to the extent possible, measures must be taken to safeguard the anonymity of employees who file complaints. If management, in consultation with legal counsel, determines that harassment has occurred, it must be corrected as soon as possible. Harassing conduct by EPA employees need not rise to the level of unlawful harassment for it to constitute misconduct subject to corrective or disciplinary action.

In addition, EPA employees or applicants for employment may also use the complaint process established by the Equal Employment Opportunity Commission to file a complaint of harassment based on race, color, sex, religion, national origin, age, disability, prior protected EEO activity and protected genetic information for individual redress. To invoke that process, EPA employees and applicants must contact an EEO counselor within 45 days of an alleged incident of harassment. Reporting harassment to a supervisor in accordance with the previous paragraph does not satisfy this requirement and does not invoke the EEOC's process. EPA employees or applicants for employment may also report harassment based on sexual orientation and status as a parent to the EPA Office of Civil Rights.

Should you have any questions or need additional information about this policy, please contact the EPA Office of Human Resources at (202) 564-4600 or the EPA Office of Civil Rights at (202) 564-7272.

APPENDIX 3



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 18 2013

MEMORANDUM

SUBJECT: 2013 Equal Employment Opportunity Policy Statement

FROM: Gina McCarthy

A handwritten signature in dark ink, appearing to read "Gina McCarthy", is written over the printed name.

TO: All Employees

Fostering a diverse and inclusive work environment through equal employment is essential to our work and our service to the American people. I am proud to reaffirm the U.S. Environmental Protection Agency's commitment to equal employment opportunity in the workplace.

The EPA cannot and will not tolerate discrimination based on race; color; religion; sex, including pregnancy, sex stereotyping, gender identity or gender expression; national origin; sexual orientation; physical or mental disability; age; protected genetic information; status as a parent; marital status; political affiliation or retaliation based on previous EEO activity. The EPA also will not tolerate any type of harassment – either sexual or nonsexual – of any employee or applicant for employment. Employment decisions, including those related to hiring, training or awards, must be made in accordance with the merit-system principles contained in 5 U.S.C. § 2301.

I expect our management team to continue to provide first-class leadership in support of equal employment opportunities. I ask that EPA managers and employees take responsibility for treating each other with dignity and respect, reporting discriminatory conduct and preventing all types of discrimination, including harassment.

The EPA promotes the use of alternative-dispute-resolution methods to resolve workplace disputes or EEO complaints. Managers are reminded that their participation in agency-approved alternative-dispute-resolution efforts to resolve employee EEO complaints is required, absent extraordinary circumstances as determined by the Office of Civil Rights' director or designee.

Any employee, manager or applicant for employment who believes he or she has been subjected to discrimination has a right to seek redress within 45 calendar days of the alleged discriminatory event by contacting the EPA's Office of Civil Rights Employment complaints resolution staff at (202) 564-7272 or an EEO officer at the regional or laboratory level. The agency will review any finding of discrimination and, when necessary, take appropriate disciplinary or corrective action.

A professional, productive and inclusive workplace is essential to the EPA's mission to protect human health and the environment. Unlawful discrimination in the workplace, including retaliation and harassment, undermines our ability to achieve our agency's mission. I appreciate your shared commitment to equal opportunity at the EPA and look forward to continuing our work together.

This paper is printed with vegetable-oil-based inks and is 100-percent postconsumer recycled material, chlorine-free processed and recyclable.